

**SMALL BUSINESS DESIGN  
CONTRACT  
AND  
GENERAL CONDITIONS**



**pennsylvania**  
DEPARTMENT OF GENERAL SERVICES

**HARRISBURG, PENNSYLVANIA**

**2013 EDITION**

## Small Business Design Contract

This Small Business Design Contract ("Design Contract"), made this \_\_\_\_\_ day,  
\_\_\_\_\_, 20\_\_\_\_, by and between the  
Department of General Services (the "Department") and

\_\_\_\_\_  
NAME

\_\_\_\_\_  
ADDRESS

Federal Identification No. \_\_\_\_\_

Commonwealth Vendor Identification No. \_\_\_\_\_

Small Design Business No. \_\_\_\_\_ (the "Professional")

WITNESSETH THAT:

**WHEREAS**, the Department is duly authorized by 62 Pa.C.S. § 514 and § 905(a) to procure services, including those to be provided by the Professional to design, and assist in bidding and construction administration services required for various Small Business Construction projects, hereinafter referred to as "Small Business projects."

**WHEREAS**, the Professional warrants that the architects and engineers that will perform the services on the Small Business projects are regularly licensed, as required by the Pennsylvania Statutes and Pennsylvania Code (Architects Licensure Law, Act of Dec. 14, 1982, P.L. 1227, as amended, 63 P.S. §34.1 et seq. and Regulations of the State Architects Licensure Board, 49 PA. CODE §9.1 et seq. and the Engineer, Land Surveyor and Geologist Registration Law, Act 367, 63 P.S. §148-158.2, as amended and Regulations of the Board of Engineers, Land Surveyors and Geologists, 37 PA. Code §37.31 et seq.), to practice their professions in the Commonwealth of Pennsylvania.

**WHEREAS**, the Professional warrants that it has not paid or agreed to pay any Commonwealth officer or employee any compensation, contingent or otherwise, either directly or indirectly, in the solicitation, procurement or execution of this agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions herein provided, the Department does hereby retain the Professional to perform the design, and assist in bidding and construction administration services required to satisfactorily complete various Small Business projects and the Professional agrees to expeditiously perform such required services and work. Further, the parties covenant and agree as follows:

1. **SCOPE OF PROJECT.** The Project is more generally described on the "Work Order", as supplemented by the additional documentation included in that project specific Work Order.
2. **TIME SCHEDULE.** The project-specific time schedule for design and construction milestones will be established at the Orientation Meeting for any Small Business project that the Professional may be selected to perform.

3. **ADHERENCE TO TIME SCHEDULE.** Time shall be of the essence of this Design Contract and it is the responsibility of the Professional to maintain and strictly adhere to the submission schedule. **It is the Department's intent that the acceptable design documents shall be completed by the Professional including all permits and cleared for bid within 90 calendar days from the date the Work Order is issued to the Professional.** In extreme situation outside the control of professional, if it appears any submission or stage of various Small Business projects will be delayed, the Professional shall immediately notify the Department. The Professional shall include in the written notice the reason(s) for the Professional's inability to meet the date(s) and a request that the Department amend the time schedule. The Department will review the Professional's notice and determine whether or not to amend the time schedule. If the Department determines that the delay is due to the fault of the Professional, the Department may:

- A. Amend the schedule and direct the Professional to expeditiously proceed with the design of the project, in which case the Department may hold the Professional responsible for any costs attributable to the delay; or
- B. Terminate the work order and/or the Design Contract for default of the Professional, in accordance with the provisions of the General Conditions.

The Professional's failure to meet the 90-day design limit and/or to provide the required notification of delay constitutes failure to perform in accordance with the terms of this Design Contract. Such failure will result in a negative performance evaluation, which will be considered by the Department in considering whether to select the Professional for any future Small Business projects.

If the Department determines that the delay is not due to the fault of the Professional, the Department may amend the time schedule. The Professional agrees that such an amendment of the time schedule is the exclusive remedy for a delay and that a claim may not be made against the Department for increased costs due to the delay.

4. **COMPENSATION AND COSTS.**

- A. The Professional's compensation ("Basic Services Compensation") shall be the dollar value set forth in the project-specific Work Order. **This fee is not negotiable.** This amount is payable through Work Orders issued under this Contract as set forth more fully in the General Conditions. The Professional's Basic Services Compensation may be adjusted only in extreme circumstances due to major adjustments to the Base Construction Amount during the Design Stage. The Professional's Basic Services Compensation will not be adjusted based upon Small Business Construction contract award amounts. The Total Amount for all Work Orders issued under this contract is not expected to exceed \$1,000,000.
- B. No additional monies, fees or compensation shall be paid by the Department or Funding Agency without an approved written modification in the form of an Additional Work Order.
- C. Upon acceptance by the Professional of the final payment under the terms of this Design Contract, as it may be modified by the parties, the Professional waives any and all claims for any additional fees under this Design Contract.

5. **LIMITED BUDGET.** The Professional must design this Project within the Base Construction Amount set forth in the project-specific Small Business Work Order.

6. **TERM OF CONTRACT.** This Contract shall terminate on November 1, 2015 (“Termination Date”), subject to any specific exceptions, including termination in accordance with the provisions of Article 9 of the General Conditions to this Contract. In the event the Small Design Business has not completed any DGS-issued Work Order prior to the Termination Date, the Contract shall remain in effect as to that Work Order until its completion. This term may be extended at DGS’s sole option where a continued need exists for the services of Small Design Business. The Small Design Business agrees that the extension of this Contract shall be on the same terms and conditions as the original Contract except as otherwise agreed to in writing by the parties.
  
7. **INCORPORATION BY REFERENCE.** The Professional’s Qualification Submission Form is incorporated herein by reference. This Design Contract is made subject to and is governed by the Department’s General Conditions to the Small Business Design Contract, 2012 Edition. All Plans and Specifications must be prepared in conformity with the Department’s Small Design Business Project Procedure Manual and Small Business Construction Contract Documents. The Procedure Manual and the Construction Contract documents are subject to amendment by the Department during the course of this Design Contract, currently anticipated to occur annually. Services performed on each Work Order issued under this Design Contract should be performed in accordance with the version of the Procedure Manual and Construction Contract documents in effect at the time of issuance of the project-specific Work Order. This Design Contract is subject to and governed by any Special Conditions made a part of thereof. In case of any irreconcilable inconsistency, the General Conditions of the Design Contract for Professional Services govern.
  
8. **CLAIMS.** The following process will be followed for claims:  
  

*Claim By A Small Design Business Against the Funding Agency:*

  - A. In the event of a controversy or claim arising from a Work Order, the Contractor must, within six months after the cause of action accrues, file a written claim with the Funding Agency for a determination. The claim shall state all grounds upon which the Small Design Business asserts a controversy exists. If the Small Design Business fails to file a claim or files an untimely claim, the Small Design Business is deemed to have waived its right to assert a claim in any forum.
  
  - B. The Funding Agency shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Funding Agency and the Small Design Business. The Funding Agency shall send his/her written determination to the Small Design Business. If the Funding Agency fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Funding Agency’s determination shall be the final order of the Funding Agency.
  
  - C. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Small Design Business may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Small Design Business shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the Funding Agency and the Funding Agency shall compensate the Small Design Business pursuant to the terms

of the Work Order.

- D. The Funding Agency will provide the Department with a copy of all determinations made by the Funding Agency. The Small Design Business will provide the Department with a copy of any appeal of a Funding Agency decision that is filed by the Small Design Business.

Claims against the Small Design Business:

- A. If any claim or action is brought, either directly or indirectly relating to the Small Design Business' services supplied under this Small Business Design Contract or Work Order, the Small Design Business shall render to the Department without compensation any proper and necessary assistance which the Department or Funding Agency may require, provided however, that if the claim is the result of action or negligence by the Department or Funding Agency, the Small Design Business shall be reimbursed for any assistance he may be required to provide.
  - B. The terms and conditions of this Small Business Design Contract, the General Conditions and Special Conditions and any other document incorporated by reference herein, shall not be construed so as to enable any party other than the Department and its assigns to bring any claim or action as referenced in this Section to this Small Business Design Contract.
  - C. The Small Design Business shall carry on its work during the claims process, including Board of Claims proceedings, if any, unless otherwise agreed by the Small Design Business and the Department or Funding Agency in writing. Should the Small Design Business fail to continue to perform its responsibilities regarding all work, without delay, any additional costs incurred by the Department, Funding Agency, or the Small Design Business as a result of such failure to proceed shall be borne by the Small Design Business, and the Small Design Business shall make no claim against the Department for such costs.
9. **ASSIGNMENT.** The Small Design Business and the Department each binds itself, its partners, successors, legal representatives and assigns to the other party to this Design Contract and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Design Contract. The Small Design Business shall not assign, sublet or transfer any interest in the whole or any part of this Design Contract without the prior written consent of the Department. The Department may assign, sublet or transfer its interest in this Design Contract explicitly under statutory authority. This provision does not prevent an assignment for financing purposes of amounts, due or to become due under this Design Contract, nor the retaining, by the Small Design Business, on its own responsibility and at its own expense, of such specialized architects or Small Design Business engineers as may be necessary for the proper design and development of various Small Business projects.
10. **AMENDMENTS.** This Design Contract may be amended by an agreement of the parties, reduced to writing and executed by authorized representatives of the respective parties. The Small Design Business hereby acknowledges receipt of notice that no person has any authority to amend or modify this Design Contract or waive any term or provision hereof except by written amendment hereto signed by the Secretary of the Department or by the Deputy Secretary for Public Works of the Department.
11. **NOTICES.** Wherever the term "notice" is used, to be effective, notice must be in writing and if to the Department must be sent by registered or certified mail, postage

and fees prepaid, or hand delivered to the Director of the Bureau of Engineering and Architecture, 18th and Herr Streets, Harrisburg, Pennsylvania 17125, and if to the Small Design Business notice must be similarly mailed or hand delivered to the address set forth in the caption of this Design Contract, unless notice of another address has been given, in which case notices shall be so hand delivered or mailed to that address. Transmissions by electronic mail (email) do not constitute notice.

12. **INTEGRATION**. This Design Contract contains all the terms and conditions agreed to by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Design Contract exists.
13. **NO THIRD PARTY RIGHTS**. Nothing in this Design Contract or in the General Conditions or Special Conditions or in any other document incorporated herein by reference or issued hereunder, expressed or implied, is intended to or shall be construed to confer upon, or give to, any person, firm or corporation or any Governmental Agency other than the Department, its successors and assigns, and the Small Design Business, any right, remedy or claim, legal or equitable, whether as third party beneficiary or otherwise. This Design Contract and all provisions applicable hereto or incorporated herein are for the sole and exclusive benefit of the Department, its successors and assigns and the Small Design Business.
14. **HOLD HARMLESS CLAUSE**. The Small Design Business shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims. Demands and actions based upon or arising out of any activities performed by the Contactor and its employees and agents under this Contract, provided the Commonwealth gives Small Design Business and prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, *et seq.*), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Small Design Business, the Commonwealth will cooperate with all reasonable requests of Small Design Business made in the defense of such suits. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Small Design Business to control the defense and any related settlement negotiations.
15. **SMALL DESIGN BUSINESS EVALUATION**. In signing this Design Contract, the Small Design Business consents to the evaluation of its performance by the Department and understands that any such evaluation may be used in future selections of Small Design Businesses. Furthermore, the Small Design Business' Consultants may also be evaluated. The Small Design Business is required to notify each of its Consultants that in contracting with the Small Design Business, the Consultant consents to the Department's evaluation of the consultant and to the use of any such evaluation in future selections of Small Design Businesses. The Department shall provide the Small Design Business and Small Design Business' Consultants with written notice of any unsatisfactory evaluations and the reasons therefore.
16. **SMALL DESIGN BUSINESS CONSULTANTS**. Only self-certified Small Design Businesses may be used as consultants on Small Business projects, unless otherwise approved by the Secretary of the Department of General Services, or designee. Any consultant retained by the Small Design Business on a specific Small Business project shall comply with the conditions of this Design Contract to the same

extent as the Small Design Business and the Small Design Business should include a clause in its Consultant Contracts to this effect.

17. **ADDITIONAL SERVICES.** The Small Design Business will perform all necessary Additional Services required by the project, as described in a project-specific Work Order. Provisions of all Additional Services will be consistent with the terms of the General Conditions, and will be by written direction of the Department (or the Funding Agency if they issued the Work Order) expressly for the purpose of authorizing Additional Services. An amendment to the Design Contract is not required for Additional Services. These Additional Services will be authorized by a Work Order.
18. **ADDITIONAL SERVICES COMPENSATION.** Compensation for Additional Services performed directly by the Small Design Business and all Consultants shall be calculated using the employee gross hourly rate times a maximum multiplier of 3 applied to the gross hourly rate. This total billing rate shall not exceed \$180.00 per hour. When salary is the source of employee compensation, an equivalent gross hourly rate shall be developed considering a 40-hour workweek, and then calculated for billing as above.
19. **ATTENDANCE AT MEETINGS.** The Small Design Business shall attend (in person or via conference call or video conference as decided by the Department) an Orientation Meeting with the Department on any Small Business project the Small Design Business is selected to perform. During the Construction Contract Administration Stage of any Small Business project the Small Design Business is selected to perform, the Small Design Business shall also attend the Initial Job Conference (in person or via conference call or video conference as decided by the Department) and at least one construction phase job conference on site and the Final Inspection on site to review the Small Business Contractor's Work, as more specifically described in the project-specific Work Order.
20. **RIGHT-TO-KNOW LAW.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Contract. Unless the Small Design Business provides the Department, in writing, with the name and contact information of another person, the Department shall notify the Small Design Business using the Small Design Business information provided by the Small Design Business in the legal contact information provided in this Contract if the Department needs the Small Design Business' assistance in any matter arising out of the Right to Know Law ("RTKL"). The Small Design Business shall notify the Department in writing of any change in the name or the contact information within a reasonable time prior to the change.
  - A. Upon written notification from the Commonwealth that it requires the Small Design Business' assistance in responding to a request under the RTKL for information related to this Contract that may be in the Small Design Business' possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Small Design Business shall provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Small Design Business' possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL and provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract. If the Small Design Business fails to provide the Requested Information within ten (10) calendar days after receipt of such request, the Small Design Business shall indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that

the Commonwealth may incur as a result of the Small Design Business' failure, including any statutory damages assessed against the Commonwealth.

- B. If the Small Design Business considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Small Design Business considers exempt from production under the RTKL, the Small Design Business must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Small Design Business explaining why the requested material is exempt from public disclosure under the RTKL. The Commonwealth will rely upon the written statement from the Small Design Business in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Small Design Business shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- C. If the Small Design Business fails to provide the Requested Information within the time period required by these provisions, the Small Design Business shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Small Design Business' failure, including any statutory damages assessed against the Commonwealth
- D. The Commonwealth will reimburse the Small Design Business for any costs associated with complying with this provision only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- E. The Small Design Business may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Small Design Business shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Small Design Business' failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Small Design Business agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, this Small Business Design Contract has been executed and delivered as of the date set forth above.

WITNESS:

Department of General Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary Date

**AND**

\_\_\_\_\_  
Corporation

ATTEST:

\_\_\_\_\_  
Secretary/Treasurer Date

\_\_\_\_\_  
President/Vice President Date

**OR**

WITNESS(ES):

\_\_\_\_\_

\_\_\_\_\_  
Limited Liability Company Date

\_\_\_\_\_

\_\_\_\_\_  
Partnership Date

\_\_\_\_\_

\_\_\_\_\_  
Sole Proprietor Date

**APPROVED AS TO FORM AND LEGALITY**

\_\_\_\_\_  
Office of Chief Counsel, DGS

8-FA-9.0  
\_\_\_\_\_  
Office of General Counsel

8-FA-9.0  
\_\_\_\_\_  
Office of Attorney General

This Design Contract is awarded based on an open-ended need. Funds will be encumbered on a per-Project basis via directed Work Orders.

\_\_\_\_\_  
Comptroller Operations Date

**SMALL DESIGN BUSINESS  
CERTIFICATE OF COMPLIANCE**

CONTRACT NO. D.G.S. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In accordance with the Rules and Regulations promulgated by the Department of General Services of the Commonwealth of Pennsylvania, the undersigned, in person, or by its duly authorized representative, hereby certifies that I, or it, have not, or has not employed or retained any person, partnership, or corporation, other than a bona fide employee or agent working for me or it, to solicit or secure this agreement; that I, or it, have not, or has not paid or agreed to pay any person, partnership or corporation, other than a bona fide employee or agent, any fee or any other consideration contingent upon the making of this agreement, and that I, or it, have not, or has not made any political contributions because of this agreement.

Dated at \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Name of Small Design Business

\_\_\_\_\_  
Signature & Title of Person Signing

County of \_\_\_\_\_

SS:

COMMONWEALTH OF PENNSYLVANIA  
\_\_\_\_\_, being duly sworn, deposes and says that he is \_\_\_\_\_  
of \_\_\_\_\_ (Name of Organization) and acknowledges that he  
executed the foregoing statement for the purpose therein contained.

Sworn to before me this  
\_\_\_\_\_ Day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

## **Exhibit A**

### **DESIGNATION AND DESCRIPTION OF SERVICES**

The Small Design Business' services for various Small Business projects are included within the following categories for the purposes of compensation. The listed services encompass typical services, which will be reviewed by the Department and designated into one of three potential categories:

- A. Survey Cost Estimate; or
- B. Basic Services paid within the Basic Services Compensation; or
- C. Additional Services identified as needed but not included in Basic Services Compensation, and paid by Work Order at a Not to Exceed Fee or a Lump Sum Fee;

The Department may supplement this Exhibit with further detailed description of the services for a specific Small Business project. Such supplement will be an Attachment to this Exhibit and shall be incorporated into the Design Contract.

- A. **SURVEY COST ESTIMATE.** The scope of Work and the details regarding the process for conducting the survey and preparing the estimate of costs is set forth in detail in the Department's Project Procedure Manual. The fee to be paid by the Department for these services will be set forth in the Notice to Small Design Businesses. The fee will not be subject to negotiation.
- B. **ITEMIZATION OF BASIC SERVICES.** All services listed in paragraphs 1, 2 and 3 are deemed to be included as Basic Services.
  - 1. **PROJECT STUDIES.** The Small Design Business shall perform project studies using the Small Design Business' own employees or a Consultant, consistent with the inherent requirements of the project to meet the fundamental needs of various Small Business projects, as part of Basic Services. These services include the following enumerated items below:
    - Electrical Load/Distribution Investigation
    - Land Use Investigation
    - Site and Existing Conditions Investigation
    - Utility Service Investigation
  - 2. **CUSTOMARY SERVICES.** The Small Design Business shall perform customary services, using the Small Design Business' own employees or a Consultant, consistent with the inherent requirements to meet the fundamental needs of various Small Business projects, as part of Basic Services. These services include the following enumerated items below:
    - Architectural
    - Civil Engineering
    - Electrical Engineering
    - Fire Protection Engineering
    - HVAC Engineering
    - Plumbing Engineering
    - Structural Engineering

3. **SPECIALIZED SERVICES.** The Small Design Business shall perform the listed specialized services, using the Small Design Business' own employees or a Consultant, consistent with the inherent requirements to meet the fundamental needs of various Small Business projects, as part of Basic Services. These services include the following enumerated items below:

- Acoustical Consultation and Design
- Audiovisual Consultation and Design
- Code and Life Safety Consultation
- Data Management/Networking Consultation and Design
- Elevator/Escalator Consultation and Design
- Environmental/Hazmat Remediation Design
- Fire and Smoke Protection Consultation and Design
- Foundation and Soils Engineering
- Interior Design/Space Planning/Finishes/Signage/Furnishings Layout
- Kitchen/Food Service Consultation and Design
- Land Development Consultation and Design
- Landscaping & Irrigation Consultation and Design
- Security Consultation and Design
- Sustainable Design Consultation and Design
- Lighting Consultation and Design
- Acoustical/Audiovisual/Lighting/Theatrical Consultation for Performance Halls, Broadcast Studios & Exhibitions
- Hospital/Medical Specialties
- Industrial Hygienist
- Laboratory Consultation
- Library/Archives Consultation
- T.V./Telephone Consultation and Design

C. **ADDITIONAL SPECIALIZED SERVICES.** Items listed in Paragraphs 1-9 are deemed to be a potential additional services that may arise on any project.

1. **CHANGE ORDERS.** The services of the Small Design Business arising from a Change Order authorized by the Department, which is not the result of the Small Design Business' error or omission, shall be compensated at the Basic Services Fee percentage established in the Work Order applied to the change order amount, with no reduction for Credit Change Orders.
2. **CODES, ORDINANCES AND PERMITS.** The Small Design Business shall be reimbursed as an additional service the actual amount paid to regulatory agencies for approvals, applications for approvals and permits obtained by the Small Design Business. Drawings and compilations of computations that may not be incorporated into the Contract Documents or required in the preparation of the Contract Drawings, but which are required by the regulatory agency, municipality or zoning board shall be compensated as a Basic Service. The completion of application forms, including sewage modules, and the design of

project construction elements necessary to comply with the regulatory requirements, including sewage facilities, storm water management, sediment and erosion control, is compensated as part of Basic Services and is not considered an additional service.

3. FIELD/LABORATORY TESTS. The Small Design Business shall be compensated as Additional Services for the field and/or laboratory tests it provides, including: sub-surface explorations, test borings, test pits, groundwater investigations, conductivity tests on groundwater, geothermal testing, laboratory testing of soils, testing of concrete, steel, masonry or other construction materials and equipment, compaction, permeability testing, bearing capacity, and any related testing.
4. RE-BIDDING. If the Department determines, in its discretion, to re-bid the Small Business Construction contracts for reasons not attributable to the Small Design Business, the Small Design Business shall be compensated its direct cost for providing any services related to the administration of the re-bidding not to exceed 10% of the Basic Services Design fee.
5. REVISIONS TO APPROVED DRAWINGS AND SPECIFICATIONS. The Small Design Business shall be compensated as an additional service when directed by the Department to revise previously approved Drawings or Specifications in whole or in part to accomplish changes not initiated by the Small Design Business and not required by the terms of the Design Contract to bring costs within the Base Construction Amount. In no case, however, shall revisions other than revisions made necessary by an approved revised Project Scope or fundamental Program change, be considered as Additional Services.
6. SOILS TESTING & ANALYSIS. The Small Design Business shall be paid additional compensation for engaging the services of a registered qualified soils foundation engineer for furnishing analysis/recommendation and construction soils and/or foundation testing, test borings, test pits, laboratory testing, inspections, approvals.
7. SUBSURFACE UTILITY INVESTIGATION: The Small Design Business shall be compensated as an additional service for providing subsurface utility investigation services, to determine the location and identification of unknown, unobservable underground facilities, utilities, tanks and other buried objects to the extent required for construction of various Small Business projects. Prospecting techniques including radio frequency electromagnetic, magnetic acoustic emission sonics, terrain conductivity, ground penetrating radar and select excavation shall be used to provide a comprehensive horizontal map and give an indication of vertical position. Information obtained using this service shall be shown on the Plat of Survey of various Small Business projects Site.
8. ADDITIONAL SPECIALIZED SERVICES: The Small Design Business shall perform the following if authorized by the Department or the Funding Agency using the Small Design Business' own employees or a Consultant:
  - Data Management/Networking Software/Hardware Selection
  - Historic Preservation Consultation and Design
  - Interior Design for Artscaping/Plantscaping & Furnishings Selection
  - Quality Assurance Testing and Inspection

- Sound/Vibration Analysis

9. CONTRACTOR CLAIM REVIEW AND ATTENDANCE AND TESTIMONY AS WITNESS.

- A. Field Dispute Review Meeting: Neither the Small Design Business nor any of Small Design Business' Consultants will be compensated for preparing for or participating in the mandatory field dispute review meeting at held when Work is 100% complete, as described in the Construction Contract General Conditions) at the project site. This meeting is deemed to be a Basic Service.
- B. In-House DGS Claim Conferences: The Small Design Business shall attend all In-House Claim Conferences scheduled by the Department. The Small Design Business shall provide up to 24 man-hours (including preparation, travel and meeting time) as Basic Services. Compensation for any hours beyond the 24 man-hours may be negotiated as an Additional Service.
- C. If any Small Business Construction contractor pursues a claim or other dispute against the Department or another Small Business Construction contractor at the Board of Claims or any other formal hearing or court proceeding (i.e., not In-House) not involving the Small Design Business' failure to design or administer construction in accordance with this Small Design Business Design Contract then, if requested by the Department, the Small Design Business and/or the appropriate Small Design Business' Consultant and/or their authorized representative(s) shall assist with preparation for such formal hearings and/or Board of Claims or other court proceedings and shall prepare testimony and shall testify, both as to facts and as to expert opinion, in all such proceedings on behalf of the Department as an Additional Service with compensation negotiated with the Department prior to the assistance being rendered.
- D. If any Small Business Construction contractor pursues a claim or other dispute against the Department or another Small Business Construction contractor at the Board of Claims or any other formal hearing or court proceeding that concerns or alleges the Small Design Business failed to design or administer construction in accordance with this Small Design Business Design Contract, then Small Design Business and/or the appropriate Small Design Business' Consultant, and/or their qualified and authorized representative(s) shall attend all formal hearings and/or Board of Claims or other court proceedings as part of Basic Services without any initial additional charge to the Department.
- E. If the Small Business Construction contractor's case involved both types of claims (Small Design Business failed to design and/or administer construction AND claim not involving Small Design Business) then, upon a final determination that determines the Small Design Business failed in some manner, compensation for Additional Services may be calculated in a pro rata method to compensate for the portion of the Additional Services related to awarded damages not relating to or arising out of the Small Design Business' failure.
- F. Under no circumstances, regardless of the cause, will the Small Design Business be paid a fee on any settlement agreement paid by the Department to a Small Business Construction contractor to settle an in-

house claim or judgment awarded by the Board of Claims or any other court.

- G. The Department's decision will be final regarding the compensation due the Small Design Business or Small Design Business' Consultants, subject to the claims process set forth in the Design Contract for Small Design Business Services.

## **EXHIBIT B**

### **NONDISCRIMINATION AND SEXUAL HARASSMENT CLAUSE**

**For purposes of this Exhibit, the term “contract” means the Design Contract and the term “Contractor” means the Small Design Business.**

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
3. The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.
5. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Small Business Opportunities (BSBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the “Initial Contract Compliance Data” form. If the contract is a Small Business Construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the “Monthly Contract Compliance Report for Construction Contractors”, each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## **EXHIBIT C**

### **CONTRACTOR INTEGRITY AND DISCLOSURE OF FINANCIAL INTEREST PROVISIONS**

**For purposes of this Exhibit, the term “Contractor” means the Small Design Business.**

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth procurement process.

In furtherance of this policy, Contractor agrees to the following:

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the [Governor’s Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.](#), or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the [Governor’s Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.](#) or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor’s financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor’s submission of the contract signed by Contractor.

- 9.** Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
- a.** Approved in writing by the Commonwealth prior to its disclosure; or
  - b.** Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
  - c.** Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
  - d.** Necessary for purposes of Contractor's internal assessment and review; or
  - e.** Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
  - f.** Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
  - g.** Otherwise required by law.
- 10.** Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
- a.** Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
  - b.** Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
    - (1)** obtaining;
    - (2)** attempting to obtain; or
    - (3)** performing a public contract or subcontract.Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.
  - c.** Violation of federal or state antitrust statutes.
  - d.** Violation of any federal or state law regulating campaign contributions.
  - e.** Violation of any federal or state environmental law.

- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.

11. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
- a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
  - b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

12. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.
14. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.
15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged

Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.

- 16.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.
- 17.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.

  - a.** "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.
  - b.** "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
  - c.** "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
  - d.** "Financial interest" means:

    - (1)** Ownership of more than a five percent interest in any business; or
    - (2)** Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
  - e.** "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), the *4 Pa. Code §7.153(b)*, shall apply.
  - f.** "Immediate family" means a spouse and any unemancipated child.

- g.** “Non-bid basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
  
- h.** “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

## **EXHIBIT D**

### **CONTRACTOR RESPONSIBILITY PROVISIONS**

**For purposes of this Exhibit, the term “contract” means the Design Contract and the term “Contractor” means the Small Design Business.**

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472  
FAX No: (717) 787-9138

## **EXHIBIT E**

### **AMERICANS WITH DISABILITIES ACT (ADA) PROVISIONS**

**For purposes of this Exhibit, the term “contract” means the Design Contract and the term “Contractor” means the Small Design Business.**

During the term of this contract, the contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. § 35.101 et seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from such activities provided for under this contract. As a condition of accepting and executing this contract, the contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
2. The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the contractor's failure to comply with the provisions of paragraph 1 above.

## **EXHIBIT F**

### **TRADE PRACTICES ACT PROVISIONS**

1. It has long been the policy of the Commonwealth not to purchase any supplies, equipment, or materials manufactured in any foreign country which prohibits the specification for or use of supplies, equipment, or materials manufactured in Pennsylvania.
2. Many world trading countries, directly or indirectly by statute, regulation, policy, procedure, or practice, grant or bestow a preference for supplies, equipment or materials manufactured in their country, thereby discriminating against the use of supplies, equipment or materials manufactured in the Commonwealth.
3. It is the policy of the Commonwealth that aluminum and steel products made in the United States should be purchased by all public agencies in preference to aluminum and steel products made in foreign countries which discriminate against supplies, equipment or materials manufactured in Pennsylvania.

a. Definitions

- i. The word “discriminates” means an act, regulation, or policy of a foreign country which, directly or indirectly;
  1. Prevents the importation, sale or use of any supplies, materials or equipment manufactured in this Commonwealth;
  2. Grants or bestows a preference, discount or other competitive advantage to supplies, materials or equipment manufactured in the foreign country, the effect whereof is to place similar supplies, materials or equipment manufactured in this Commonwealth at a competitive disadvantage;
  3. Restricts the opportunities for persons having a business situs in this Commonwealth to bid on or compete for government contracts, including but not limited to a preference for residents of the foreign country;
  4. Solicits for, awards or negotiates public works contracts on a selective tender basis;
  5. Imposes discriminatory duties, tariffs, or border taxes on the importation of supplies, materials, or equipment not produced in the foreign country, the effect whereof is to place supplies, materials, or equipment manufactured in this Commonwealth at a competitive disadvantage with like goods manufactured in any foreign country;
  6. Adopts or condones any other unfair method of competition in international trade, including but not limited to, the exportation of aluminum or steel products made in the foreign country through cartels or the subsidization of said products.
- ii. The word “person” means natural persons, corporations, partnerships, business units, and associations existing under or authorized by the laws of either the United States, the laws of any territories, or the laws of any state.
- iii. The words “public agency” mean:
  1. Counties, cities, boroughs, townships, school districts, and any other governmental unit or district;

2. The General State Authority, the State Public School Building Authority, the State Highway and Bridge Authority, and any other authority now in existence or hereafter created or organized by the Commonwealth;
  3. All municipal or school or other authorities now in existence or hereafter created or organized by any county, city, borough, township or school district or combination thereof; and
  4. Any and all other public bodies, authorities, officers, agencies or instrumentalities, whether exercising a governmental or proprietary function.
- iv. The words “public works” mean any structure, building, highway, waterway, street, bridge, pier, transit car or system, airport or other betterment, work or improvement whether of a permanent or temporary nature and whether for governmental or proprietary use contracted for by any public agency or financed in whole or in part by any public agency.
- v. The words “aluminum or steel products made in a foreign country” mean aluminum or steel products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from aluminum or steel not made in the United States.
- vi. The word “importer” means any person registered in the Commonwealth and doing business in the Commonwealth who engages in the receiving, storing, distributing, or other processing of aluminum or steel products made in a foreign country; or who engages in the solicitation or acceptance of orders or contracts for the furnishing of or supplying of aluminum or steel products made in a foreign country.

## **EXHIBIT G**

### **TAX LIABILITY PROVISION**

**For purposes of this Exhibit, the term “contract” means the Design Contract and the term “Contractor” means the Small Design Business.**

The contractor, by execution of the contract:

1. Certifies that the contractor has no outstanding tax liability to the Commonwealth of Pennsylvania;
2. Authorizes the Department of Revenue to release information related to its tax liability to the Department of General Services; and
3. Authorizes that the Commonwealth of Pennsylvania (Commonwealth) may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the contractor under any contract with the Commonwealth.

The certification of no outstanding tax liability is a material representation of fact upon which reliance is placed by the Department in entering into the contract. If it is later determined that the contractor knowingly rendered an erroneous certification, the Department may find the contractor in default and terminate the contract. Erroneous certification may also be grounds for the initiation of civil or criminal proceedings.

# General Conditions To The Small Business Design Contract

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## **General Conditions To The** **Small Business Design Contract**

### **ARTICLE 1 – DEFINITIONS**

**1.1. DEFINITIONS:** Whenever in these General Conditions to the Design Contract for Small Design Business Services the following words and expressions occur, they have the following meanings, which shall be construed in conjunction with applicable Commonwealth Procurement Code definitions:

**1.1.100 ADDITIONAL SERVICES:** Any Small Design Business Services determined by the Department during and/or after the execution of the Design Contract to be necessary for a specific Small Business Project that is not included as Basic Services.

**1.1.101 ADMINISTRATIVE PROCEDURES:** The Department of General Services' ("the Department") construction procedures manual to be followed for various administrative functions, including but not limited to, Project correspondence, Job Conferences, schedules, testing, submittals, Applications for Payment, Change Orders, Extensions of Time, Steel Product Procurement compliance, Substantial Completion, Final Inspection, and Closeout Inspection.

**1.1.102 APPLICATION FOR PAYMENT:** Document submitted by each Prime Contractor pursuant to the applicable Administrative Procedure for review by the Department or Funding Agency for subsequent release of payment.

**1.1.103 BASE CONSTRUCTION AMOUNT:** Dollar value which shall be the basis for the design fee that is designated in the Work Order. This value shall be the limit for design estimate and shall also be used to designate the proper Small Business Tier.

**1.1.104 BASIC SERVICES:** Professional services including architectural and engineering services which may include, as applicable, civil, structural, HVAC (heating, ventilating, air conditioning), plumbing, electrical, fire protection, and landscaping architecture which are designated as Basic Services and set forth in the spreadsheet included as an Exhibit to the Small Business Design Contract.

**1.1.105 BID OPENING DATE:** Date upon which bids are received for Small Business Construction contracts and opened publicly in accordance with the Commonwealth Procurement Code.

**1.1.106 BUREAU OF PROFESSIONAL SELECTIONS AND ADMINISTRATIVE SERVICES (BPSAS):** DGS Bureau responsible for issuance and administration of all procurement related services, including Arbitration, Fiscal, Project Administration, and Contract Services.

**1.1.107 CHANGE ORDER:** A written order developed by the Small Design Business and signed by the DGS (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) directing a Small Business Construction contractor to make changes to the Work, construction cost and construction time, which is made under the authority of the changes clause of the Small Business Construction contract. The change order may be either with the consent of the Small Business Construction contractor or a unilateral order by the DGS or the Funding Agency on a Tier 2 project.

**1.1.108 CLEARED FOR BID:** All permits have been secured, DGS Bureau of Real Estate approval, all stamped bidding documents have been accepted as conforming to DGS' Project Procedure Manual,

**1.1.109 CONTRACT COMPLETION DATE:** Date specified in the Small Business Construction contract for completion of the Work.

**1.1.110 DAYS:** Calendar days unless specifically stated otherwise in the Design Contract.

**1.1.111 DEPARTMENT:** The Commonwealth of Pennsylvania Department of General Services, also known as “DGS” and referred to throughout the Design Contract as singular in number. The terms “Department” and “DGS” are used interchangeably throughout these General Conditions.

**1.1.112 DIRECTOR OF BUREAU OF ENGINEERING AND ARCHITECTURE:** Administrative head of DGS’ Bureau of Engineering and Architecture.

**1.1.113 EFFECTIVE DATE OF THE CONTRACT:** Date on which the last Commonwealth official required to execute the contract, signs.

**1.1.114 ERROR OR OMISSION CHANGE ORDER:** A change order to a Small Business Construction contractor required to correct Department-deemed deficiencies caused by the Small Design Business’ failure to comply with its standard of care in the performance of services under the Design Contract.

**1.1.115 FINAL INSPECTION:** A review of the Work conducted by the Small Design Business, at a time and date requested by a Contractor, to determine whether the Small Business project is at substantial completion.

**1.1.116 FUNDING AGENCY:** The Executive Agency of the Commonwealth that has proposed or requested the construction of a Small Business project, and who will provide funding and possibly construction administration of the Tier 2 Small Business project.

**1.1.117 JOB CONFERENCE:** Meetings scheduled and conducted on-site by DGS (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) with the Small Design Business and all Prime Contractor(s), to discuss and review the progress of the Work. Regularity and attendance will be project-specific.

**1.1.118 LEAD CONTRACTOR:** Prime Contractor who coordinates the progress of the Work. The Lead Contractor will be designated in the Specifications.

**1.1.119 ORIENTATION MEETING:** A meeting scheduled and conducted by the Department with the Small Design Business and the Funding Agency for the purpose of reviewing and discussing the Scope, the Small Design Business’ services, and scheduling, where applicable, an initial site visit.

**1.1.120 PROJECT PROCEDURE MANUAL:** Document provided and issued by the Department to direct the Small Design Business as to proper Department procedures and policies with regards to the Small Design Business’ responsibilities, duties and obligations necessary for the completion of its Services under the Design Contract.

**1.1.121 PROJECT:** The total Work to be performed by all separate Prime Contractors under the same Project Number.

**1.1.122 PROJECT BUDGET:** The funding for the entire project, including Small Design Business fee, Small Design Business contingency, construction contract amounts and construction contingency.

**1.1.123 PUNCH LIST:** A list of uncompleted items of Work generated by the Small Design Business at Final Inspection.

**1.1.124 RECORD DRAWINGS:** The revised set of construction documents (also referred to as L&I Record Drawings) which the Small Design Business is responsible for submitting to the Department of Labor and Industry for approval of changes made during construction that are not in accordance with the approved construction documents.

**1.1.125 REQUEST FOR INFORMATION:** A written question issued by the Small Business Construction contractor to the Small Design Business seeking clarification of the Contract Documents.

**1.1.126 SAMPLES:** Physical examples furnished by the Small Business Construction contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.

**1.1.127 SECRETARY:** The administrative head of the Department of General Services.

**1.1.128 SMALL DESIGN BUSINESS:** Architect and/or Engineer retained directly by the Department or the Small Design Business' authorized representative or consultant(s).

**1.1.129 SMALL DESIGN BUSINESS' CONSULTANT:** Specialist(s) providing Small Design Business Services which has been retained under a contract by the Small Design Business for the performance of its specialty. No privity of contract exists between the Department and any Small Design Business' Consultant and, to the extent set forth by law, the Small Design Business' Consultant has no direct cause of action against the Department for any claim arising out of a Small Business project.

**1.1.130 SMALL BUSINESS DESIGN CONTRACT:** The contract for Small Design Business Services, including these General Conditions thereto and any Special Conditions, in addition to any Amendments, between the Department and the Small Design Business. The Small Business Design Contract represents the entire and integrated contract between the parties and supersedes all prior negotiations or representations, either written or oral. To the extent these referenced documents are amended by statute, statutory language will control. The Small Business Design Contract is commonly referred through these General Conditions as "Design Contract".

**1.1.131 SMALL BUSINESS PRIME CONTRACTOR:** Any Small Business Contractor who holds a contract ("Prime Contract") with the Department for construction services on a Small Business project. The Department, in its sole discretion, shall determine the number of Prime Contractors on each Project. The Small Design Business is not entitled to any additional fee for a Project that has more than one Prime Contractor or if the Department, during any point prior to Bid Opening Date, increases the number of Prime Contracts to be bid.

**1.1.132 SMALL BUSINESS PRIME CONTRACTOR DOCUMENTS:** Standard Form of Contract for construction, Notice to Bidders, Instructions to Bidders, the Bid Package, Contract Bonds, Conditions of the Construction Contract (General, Special, and other Conditions), Drawings of all Prime Contracts, Specifications of all Prime Contracts, all bulletins and addenda issued prior to execution of the Standard Form of Contract for Construction, all construction change orders, and the Administrative Procedures of the Bureau of Construction. These documents form the entire Small Business Construction contract and are incorporated in the Small Business Construction contract by reference as if fully set forth therein. To the extent that any of these documents are amended by statute, statutory language will control.

**1.1.133 SPECIFICATION:** A description of the physical or functional characteristics or the nature of a construction item, including a description of any requirement for inspecting, testing or preparing a construction item for delivery. The specifications are a part of the Contract Documents and must be interpreted in conjunction with the other Contract Documents, as specified further in the General Conditions.

**1.1.134 SUBCONTRACTOR:** A person or organization that has a contract with a Small Business Construction contractor to perform any of the Work. The term Subcontractor is referred throughout the Contract Documents as singular in number and means a Subcontractor or its authorized representative. There is no privity of contract between the Department and any Subcontractor. The Subcontractor has no direct cause of action against the Department or the Small Design Business for any claim arising out of a Small Business project.

**1.1.135 SUBMITTALS:** Administrative or technical information, including but not limited to shop drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog data, and other data that are prepared by the Small Business Construction contractor or any Subcontractor, manufacturer, supplier, or distributor, and which illustrate some portion of the Work or how it fits in relation to other parts of the Work.

**1.1.136 SUBSTANTIAL COMPLETION:** The point in time when the Work on the Contract is sufficiently completed in accordance with the Contract Documents and certified by the Department and the Small Design Business so that the Small Business project or specified part(s) of the Small Business project can be used, occupied or operated for its intended use. In no event shall a Project be certified as substantially complete until at least 90% of the Work has

been completed and accepted by the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) and is capable of Beneficial Occupancy.

**1.1.137 UNIFORM CONSTRUCTION CODE (UCC):** Pennsylvania's Uniform Construction Code (35 P.S. §7210.101 et seq.) that grants the Pennsylvania Department of Labor & Industry sole jurisdiction over state-owned buildings. A general description and important links can be found at <http://www.dli.state.pa.us> and clicking on the Building Codes Quick Link.

**1.1.138 WORK:** The construction and services required by Contract Documents, whether completed or partially completed, including all labor, materials, equipment and services provided or to be provided by a Small Business Construction contractor to fulfill its obligations. The Work may constitute the whole or a part of various Small Business projects.

**1.1.139 WORK ORDER:** The authorization or approval by the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) that defines the scope of work, the schedule, the fee and the base construction amount.

## **ARTICLE 2**

### **SMALL DESIGN BUSINESS' RESPONSIBILITIES AND SERVICES**

#### **2.1 GENERAL REQUIREMENTS**

**2.1.100 SMALL DESIGN BUSINESS' SERVICES.** These Services consist of stages and submissions described in these General Conditions and the Basic and Additional Services required for various Small Business projects, as further described in the Design Contract.

**2.1.101 LIMITED BUDGET CONTRACT AND WORK ORDERS.** This is a limited budget agreement. It is the Small Design Business' responsibility to promptly notify the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) if, in the Small Design Business' opinion, a Small Business project cannot be designed and constructed within the Base Construction Amount for the project as set forth in Article 4 (Compensation and Costs) of the Design Contract. It is the Small Design Business' responsibility to so notify the Department or Funding Agency that such a situation is apparent.

If, without such notification, the following occurs:

- A. The Small Business Construction contracts are bid; and
- B. The Small Business Construction contractors' bids when received are in excess of the Base Construction Amount; and
- C. The Project cannot be awarded by authorization of additional project funds,

then the Department or Funding Agency has the discretion to require the Small Design Business to adjust the Small Business project's design, without charge to the Department or Funding Agency, and rebid the Small Business project until the aggregate of the bids is within the Base Construction.

**2.1.102 SMALL DESIGN BUSINESS CLIENT RELATIONSHIP.** The Department is constructing a Small Business project for the Funding Agency in accordance with the Small Business project scope of work. The Small Design Business is responsible to the Department, and only the Department may give instructions which bind the Department. The Small Design Business is required to coordinate and communicate with the Funding Agency, but such coordination and communication does not constitute a client relationship between the Small Design Business and the Funding Agency. Neither the Funding Agency nor the Small Design Business may change the Small Business project Scope or direct that items be included in the design which will increase the construction cost above the Base Construction Amount. All requests for such changes must be submitted to the Department in writing by the Funding Agency. The Funding Agency may, however, issue Work Orders to the Small Design Business for Additional Services necessary

within the scope of work for the project. If the Small Design Business receives communication and/or information from the Funding Agency regarding the Small Business project scope of work, schedule or an increase in the Construction Budget over the Base Construction Amount, then the Small Design Business shall notify the Department in writing immediately and shall not proceed to act upon such communication and/or information unless instructed to do so by the Department. If the Small Design Business relies on such information and/or communication regarding the Small Business project Scope, schedule and/or an increase in the Construction Budget over the Base Construction Amount that has not been submitted to and approved by the Department, the Small Design Business would be relying on such information and/or communication at its own risk and shall absorb all costs associated with its services performed upon such reliance.

**2.1.103 SMALL DESIGN BUSINESS' CONSULTANTS.** The Small Design Business' Compensation for Basic Services, except as otherwise specifically provided, includes the compensation for all consultants in the several branches of the architectural and engineering professions necessary to perform the Basic Services.

- A. Consultant Design Contract(s): At the Department's discretion, (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) the Small Design Business shall submit a copy of every Small Design Business' Consultant Design Contract.
- B. All agreements between the Small Design Business and its Small Design Business' Consultant must:
  - 1. Set forth the amount the Small Design Business' Consultant is to be paid;
  - 2. Describe the scope of services to be performed by the Small Design Business' Consultant; and
  - 3. Require that the Small Design Business' Consultant is without privity of contract with the Department and that the Consultant agrees by signing the Consultant Design Contract that it neither acquires nor intends to acquire any rights against the Department on a third party beneficiary theory or any other theory.
  - 4. Require the Small Design Business to pay the Small Design Business' Consultant in accordance with the requirements of the Prompt Payment Act, (62 Pa.C.S. §3931 et seq.) where the Small Design Business shall be "the Contractor" and the Small Design Business' Consultant shall be "the subcontractor". Violation of the provisions of the Prompt Payment Act will have ramifications, including but not limited to subjecting the Small Design Business to penalties and attorneys fees under §3935, and possible suspension and/or debarment under §531 of the Commonwealth Procurement Code.

**2.1.104 ATTENDANCE AND MINUTES OF CONFERENCES AND MEETINGS.** The Small Design Business shall attend all meetings during design stages which are required by the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) as part of Basic Services. The Small Design Business, or its authorized representative, and the Small Design Business' Consultants when appropriate, shall attend all meetings and conferences that are reasonably required by the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency).

**2.1.105 COORDINATION OF SERVICES, UTILITIES AND EXISTING FACILITIES.** As part of Basic Services, the Small Design Business shall coordinate all its services with and between its consultants, the Department and the Funding Agency and obtain all necessary data for coordinating the Project with existing structures and all support utilities. The Small Design Business shall consult with the Funding Agency regarding any correlation of design with future planning. The Small Design Business shall confirm in writing to the Department and the Funding Agency all data furnished to the Small Design Business in this connection and the data's

adequacy. The Small Design Business shall obtain from the various Public Services and Utility Companies, such as gas, electric, water, steam, waste water treatment/disposal, surface water disposal, telephone and communication, a written commitment of their capability to service this Project and shall arrange for all such services to be provided to the Project site. Where special project studies, reports, investigations, tests or specialized additional services have been performed, the Small Design Business shall, as part of Basic Services, coordinate, incorporate and develop design appropriately. Where water or sewage disposal are not readily available from the public services, the Small Design Business' design responsibility, unless otherwise directed by the Department, includes the preparation of necessary plans and specifications for water supply or for the sewage disposal systems, and the cost thereof shall be included in the

**2.1.106 VISITS TO SITE.** During the design of the Small Business project, the Small Design Business shall visit the Small Business project Site at least once and shall obtain and study available record drawings, investigate existing conditions. The Small Design Business shall verify in writing to the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) that it has requested and obtained pertinent interference documentation from all utility companies, the Funding Agency, and any other entity that may have underground or concealed lines or objects in the area of the proposed construction. The Small Design Business shall verify project related existing conditions by visual inspection and measurement and not by sole reliance on the Record Documents or the Land Survey.

**2.1.107 SUBMISSIONS.**

- A. **SCHEDULING SUBMISSIONS:** The Small Design Business must undertake to obtain all approvals in a timely manner to permit the Services to continue on schedule.
- B. **APPROVAL:** All submissions must be approved under the written direction of the Department as provided elsewhere in this Design Contract.
- C. **REVISIONS:** The Small Design Business is responsible for responding to any and all comments to design made by the Department and/or the Funding Agency as provided for elsewhere in this Design Contract.

**2.1.108 SEPARATE PRIME CONTRACTS.** The Small Design Business shall develop and coordinate the Construction Documents for all the separate prime contracts to ensure against omissions, conflicts, overlaps or duplication of any items of Work or materials on the Small Business project. All documents, including all Statements of Probable Construction Cost, must be prepared in accordance with the Separations Act (71 P.S. § 1618) and the Commonwealth Procurement Code (62 Pa.C.S. §322).

**2.1.109 REPRESENTATION AS TO QUALIFICATIONS.** The Small Design Business specifically represents and covenants with the Department that the Small Design Business and Small Design Business' Consultants and each of their agents, employees and officers possess and shall possess the experience, knowledge and skills necessary to qualify them individually for the particular duties they perform. The Department may demand, with written justification to the Small Design Business, the withdrawal from various Small Business projects of any person employed by the Small Design Business who the Department deems to be insufficiently qualified for that portion of the Services or who is incompetent or guilty of misconduct.

**2.1.110 SELECTED COMMISSIONING AGENT.** When the Department has determined, at any point during the design, construction procurement or Small Business Construction contract administration stage of various Small Business projects, that a Commissioning Agent will be used to provide services, including but not limited to, design intent documentation, commissioning plan, constructability evaluation, commissioning of any of the various constructed building systems, and training, the Small Design Business shall cooperate with the Commissioning Agent. The Small Design Business shall provide the Commissioning Agent with design and construction documents, Statements of Probable Construction Costs, and all other information pertinent to the building systems. No additional compensation shall be paid to the Small Design Business for services and documents provided in support of the Commissioning Agent.

**2.1.111 STATEMENT OF PROBABLE CONSTRUCTION COSTS.** The Small Design Business' Statement of Probable Construction Cost must be submitted on the form prescribed in the Department's Bureau of Engineering and Architecture Project Procedure Manual and shall be to the level of detail commensurate with the current level of design. If the Small Design Business proposes to use a different but similar format to the Department's prescribed forms that provides a comparable level of detail, the Small Design Business shall submit the proposed cost structure to the Department for written approval prior to its use. The Department reserves the right review and comment on the Small Design Business' Statement of Probable Construction Cost.

- A. The Small Design Business shall submit a Statement of Probable Construction Cost with each design submission as provided for elsewhere in this Design Contract. Such Statements of Probable Construction Costs shall always be based upon the Base Construction Amount.
- B. If the Statement of Probable Construction Cost indicates a potential problem in securing a bid within the Base Construction Amount, the Small Design Business shall notify the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) and shall coordinate with the Funding Agency to redefine the design concepts of space utilization, building efficiencies, materials of construction, etc., so that the estimated cost of construction does not exceed the Base Construction Amount.
- C. The Statement of Probable Construction Cost should reflect construction standards and should address indexes utilized, outreach to the contracting community, and any assumptions made in computing the Statement of Probable Construction Cost, including escalation to the midpoint of construction.

## **2.2 SCHEMATIC SUBMISSION**

**2.2.100 PROJECT SCOPE STATEMENT.** A Survey Cost Estimate, including a Project Scope Statement will be supplied by the Department for a Small Business project. The Project Scope Statement may contain background information for the Small Business project and quantification of work items contained in the Small Business project. The Survey Cost Estimate will have been used to define the Base Construction Amount. For new construction and major rehabilitation projects, the Funding Agency may provide a program statement describing proposed program activities, space requirements and equipment needs.

**2.2.101 ORIENTATION CONFERENCE.** The Project Scope Statement will be discussed with the Small Design Business at the Orientation Conference. Beginning with the Initial Site Visit, the Small Design Business shall meet and work with the Funding Agency to determine detailed program and scope requirements and shall refine and complete the scope as described in the Bureau of Engineering and Architecture Project Procedure Manual.

**2.2.102 SCHEMATIC DESIGN DOCUMENTS.** The Schematic is developed by the Small Design Business in order to describe the Department's budget, objectives, schedule, constraints, applicable codes, criteria, including space requirements and relationships, special equipment, systems and site conditions, including but not limited to local zoning, utilities, permits and all state and federal regulatory approvals. The Schematic portion of the Design Stage is intended to gather and to clarify the project requirements with all involved parties. The Schematic Submission shall be submitted for review and approval by the Department or the Funding Agency if the Tier 2 project is administered by the Funding Agency. If the Small Design Business determines, after coordinating and problem-solving with the Funding Agency, that the Schematic submission cannot be developed as defined in this section, then the Small Design Business shall submit a written explanation to the Department immediately and the Department may direct the Small Design Business accordingly.

## **2.3 CONSTRUCTION DOCUMENTS SUBMISSION**

**2.3.100 CONSTRUCTION DOCUMENTS.** Upon receipt of written approval of the Schematic Submission, the Small Design Business shall finalize the Construction Documents, on or before the date provided in the Final Time Schedule, and shall submit the same for review and approval to the Department or the Funding Agency if the Tier 2 project is administered by the Funding Agency. The submission shall include the recommendation for the number of calendar days for construction and, if required, the number of calendar days for Temporary Heat. This submission shall include working drawings setting forth all items necessary for bidding and proper execution of the Work including but not limited to, materials, workmanship, finishes, mechanical and electrical systems, special equipment, site work, and utility connections and services. The Construction Documents shall be detailed in accordance with the requirements of the Bureau of Engineering and Architecture Project Procedure Manual.

**2.3.101 FINAL STATEMENT OF PROBABLE CONSTRUCTION COST.** With the Construction Documents Submission, the Small Design Business shall provide an updated Statement of Probable Construction Cost on the form prescribed in the Department's Bureau of Engineering and Architecture Procedure Manual. If the Small Design Business proposes to use a different but similar format to the Department's prescribed forms providing a comparable level of detail, the Small Design Business shall submit the proposed cost structure to the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) for written approval prior to its use. At this submission, the Statement of Probable Construction Cost shall include a breakdown of the estimated construction cost computed at present prices, **projected to the midpoint of construction**, and a justification of the factors used for such projection. This Statement shall address any significant modifications made by the Small Design Business in the course of developing the Construction Documents. The Small Design Business is responsible for providing a complete budget summary showing the breakdown including detailed line items and takeoffs. Statements of Probable Construction Cost shall be coordinated and consistent with project descriptions, plans, drawings and specifications at the time the statement is prepared.

**If the Statement of Probable Construction Cost furnished with this submission is not within the Base Construction, the Department, subject to the limitations of Section 2.1.101, may require the Small Design Business to adjust the design, at no expense to the Department, to bring the Statement of Probable Construction Cost within the Base Construction.**

**2.3.102 UNIFORM CONSTRUCTION CODE (UCC) APPLICATION FOR BUILDING PERMIT.** If the Department or Funding Agency determines the Construction Documents Submission is adequate for building permit purposes, it will direct the Small Design Business in writing to submit all the construction documents to the Department of Labor and Industry with completed UCC Application for building permit.

**2.3.103 CONSTRUCTION DOCUMENTS APPROVAL.** The Small Design Business shall meet with the Funding Agency for the purpose of and reviewing the Construction Documents including the updated schedule and the Final Statement of Probable Construction Cost. Once approved by the Funding Agency, the Small Design Business shall submit the documents to DGS for review to ensure compliance with the Project Procedures Manual. Once accepted, DGS will proceed with bidding the project. The Small Design Business agrees that approval of the Construction Documents by any person, body or agency shall not relieve the Small Design Business of the responsibility for the adequacy, fitness, suitability and correctness of architectural and engineering design and for designing the work in accordance with sound and accepted engineering and architectural practices.

**2.3.104 CONSTRUCTION DOCUMENTS REJECTION.** The Department will provide the Small Design Business written documentation regarding any rejection of the submission due to failure to adhere to the requirements of the Bureau of Engineering and Architecture Project Procedure Manual.

- A. The Small Design Business shall address all comments and issues raised by the Department as reasons for rejection and shall submit revised Construction Documents which address all such comments within the revised submission deadline provided by the Department in the rejection letter.

- B. The Small Design Business shall not be paid for the Construction Documents design fee until it receives the written approval from the Department.
- C. If the Small Design Business fails to remedy the reasons for rejection by the revised submission date, the Department may direct that design cease and continue to cease payment and such failure may result in default by the Small Design Business of this Small Design Business Design Contract.

## **2.4 CONSTRUCTION PROCUREMENT**

**2.4.100 ADVERTISING AND RECEIPT OF BIDS.** The Department will designate the construction period and advertise the Small Business project. The Department will designate the date, hour and place for the receipt, public opening, and reading of bids.

### **2.4.101 REPRODUCTION AND DISTRIBUTION OF BIDDING DOCUMENTS.**

- A. DGS will administer the reproduction and distribution of the bidding documents.
- B. The Small Design Business shall not provide answers, clarifications or other explanations to one bidder and not to others since this may create an unfair bidding environment.
- C. The Small Design Business shall provide the Department with written responses on Requests for Information received from bidders as a Basic Service.
- D. The Small Design Business shall create the language, but shall not actually issue bulletins. All bulletins will be issue by the Department.

**2.4.102 PRE-BID CONFERENCES.** If required by the Department, the Small Design Business, with its key consultants, shall attend a pre-bid conference as part of Basic Services. The Small Design Business shall be responsible for taking and issuing the Minutes of the Pre-Bid Conference to the Department and the Funding Agency. The meeting Minutes alone shall not be issued as a bulletin. Only written questions received resulting from the Pre-Bid Conference shall be addressed by bulletin.

## **2.5 ADMINISTRATION OF SMALL BUSINESS CONSTRUCTION**

**2.5.100 SCOPE OF SERVICES.** The Construction Contract Administration Stage commences with the issuance of a Notice of Award of Small Business Construction contracts and ends at the issuance of the final payment to the Small Design Business unless otherwise specified by the Department in writing. The Small Design Business shall assist and cooperate with the Department's administration of the Contract (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) and review the performance of the Work in accordance with the applicable provisions of these General Conditions and as described elsewhere in the DGS Construction Contract Documents. Services shall include both construction field and office activities.

**2.5.101 ACCESS TO WORK AND ON-SITE REPRESENTATION.** The Small Design Business, the Small Design Business' Consultants and authorized representatives shall have full access to the Work at all times and be required to abide by the applicable safety programs and access requirements, if any, of the Funding Agency and security programs established for various Small Business projects. The Small Design Business is not responsible for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connections with the Work. The Small Design Business shall, as an Additional Service, provide a representative at the site during all times of active construction when directed by the Department.

**2.5.102 VISITS TO THE SITE AND MEETINGS.** The Small Design Business or Small Design Business' Consultants must visit the site at least once to review the Work in order to achieve the requirements of each Contract, with a maximum number of visits as set forth in the Work Order. The Small Design Business shall review the progress of the Work, including the completeness of the Small Business Construction contractors' installation drawings, and take actions necessary or

appropriate to assist in achieving the compliance with the Contract Documents. The Small Design Business shall advise the Department's representative (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) as to particular matters to watch and guard against. The Small Design Business shall maintain a log of all of its site visits and the Small Design Business' Consultant's visits to the Site for each discipline.

**2.5.103 INTERPRETER.** The Small Design Business is, in the first instance, the interpreter of the Construction Documents and the initial evaluator of the Small Business Construction contractor's performance. Within seven (7) days after receipt of a written request from a Small Business Construction contractor (in the form of an RFI-Request for Information), the Small Design Business will, render in writing an interpretation or evaluation consistent with the Contract Documents. The Small Design Business will provide the Department with a copy of the interpretation.

**2.5.104 REVIEW OF CONTRACTOR'S SUBMITTALS.** The Small Design Business shall review and approve or take other appropriate action with regard to submittals, including shop drawings, samples, materials or other submissions of the Small Business Construction contractor for compliance with the requirements of the Contract Documents. The Small Design Business shall follow the process and procedures set forth these General Conditions. The Small Design Business shall request from the Small Business Construction contractor and may rely on bona fide test data, certifications and other evidence submitted by the Small Business Construction contractor, as needed to establish conformity with the Contract Documents prior to approving material and products.

**2.5.105 PROGRESS REPORTS AS TO CONSTRUCTION.** The Small Design Business shall, within seven (7) days of being at the site make a written report to the Department relative to the progress of the Work and or issues discussed at the meeting. In the event of Small Business Construction contractor's non-compliance, including omission of Work or faulty workmanship, the Small Design Business shall recite in the report the paragraph number or article of the Specifications or detail or drawing that has been violated, indicating the deviation from design.

**2.5.106 CHANGE ORDERS.** The Small Design Business' role in the change order process is specifically set forth in the Administrative Procedures. Pursuant to the Administrative Procedures, the Small Design Business shall evaluate and recommend action to the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) on all change order requests initiated by the Funding Agency, the Small Business Construction contractors, or by the Small Design Business' own observation of the Work.

- A. **EVALUATION OF INITIAL REQUEST.** The evaluations shall include a Statement of Probable Construction Costs (with a breakdown of major items of work), an opinion of the cause of the change order with substantiating background and a recommendation as to whether the change order should be pursued.
- B. **CONSTRUCTION CONTRACTOR'S CHANGE ORDER BREAKDOWN.** The Small Design Business shall review the Small Business Construction Contractor's proposed cost of the work including labor and materials and effect upon time dependent costs. The Small Design Business shall comment on these proposed costs and expenses and advise the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) in writing.
- C. **DEPARTMENT'S REVIEW.** The Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) will review the Small Design Business' input and determine those change orders to be pursued.
- D. The Small Design Business shall receive no compensation or fee for any change orders which result from an error or omission by the Small Design Business. However, Small Design Business shall be compensated for Change Orders which, although originally designated as due to an error or omission, are not finally determined to have resulted from an error or omission.

**2.5.107 REJECTION OR STOPPAGE OF WORK.** Where the Small Design Business observes deficiencies or observes the Small Business Construction contractor failing to execute the Work in accordance with the Contract Documents, the Small Design Business shall promptly notify the Small Business Construction contractor in writing of all such deficiencies and shall issue such notices of Non-Compliant Work that the Small Design Business deems appropriate. The Small Design Business shall recommend rejection of work that does not conform to the Contract Documents and immediately notify the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) of the recommendation of rejection. The Small Design Business shall recommend stoppage of Small Business Construction contractors' work or special testing whenever such testing or stoppage is necessary, in the Small Design Business' opinion to achieve compliance of the Work with the Contract Documents. Recommendation of stoppage shall be made orally to the Department or Funding Agency's field representative and confirmed, in writing, within twenty-four (24) hours of the recommendation. The confirmation must include the reasons for such recommendation.

**2.5.108 CONSTRUCTION BY STATE EMPLOYEES.** If the Department decides to perform the actual construction using its own personnel, or other State employees, or inmates, the Small Design Business shall prepare appropriate drawings, specifications, and material lists as a negotiated additional service.

**2.5.109 STANDARDS OF QUALITY.** Where a manufacturer's name and product/model designation is specified, it is to be used as a "basis of design", to establish a standard or quality, appearance, design, function, and performance, and for establishing a standard of competitive bidding. The Small Construction Business Contractor will furnish submittals to the Small Design Business and the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) subsequent to the Effective Date of the Contract, which shall include a comprehensive description for each material or equipment proposed to be utilized, with engineering, construction, dimension and performance data. The Small Design Business will render a written determination to the Small Business Construction Contractor.

**2.5.110 SUBSTITUTIONS.** If the Small Business Construction contractor desires to furnish material or equipment different in quality, performance, or appearance from that named in the specification, the Small Business Construction contractor shall submit to the Small Design Business and the Department a comprehensive description of the proposed substitution, including engineering, construction, dimension, performance and appearance data, along with a statement of the cost involved. The Small Design Business shall render a written opinion of the proposed substitution to the Department within thirty (30) days after receipt of the request for Substitution. The Small Design Business' opinion shall include an evaluation of the salient characteristics of the proposed substitution, its compatibility with the Small Business project, its cost and any schedule impact on the Small Business project.

**2.5.111 SMALL DESIGN BUSINESS OBSERVATION OF TESTING.** If the Small Design Business needs to observe inspections, tests or approvals, it shall do so promptly, and where practicable, at the source of supply.

## **2.6 PROJECT CLOSEOUT**

**2.6.100 CLOSEOUT GENERALLY.** Project Closeout consists of a Final Inspection. The Small Design Business shall provide such services as are necessary to ensure that the Small Business project has been fully completed in accordance with the Contract Documents. Such services include, but are not limited to, coordinating and conducting the Final Inspection, collecting all necessary documents from the Small Business Construction contractors, and providing assistance for all dispute claims. During the one (1) year period after the date of Closeout Inspection, the Small Design Business shall assist the Department in securing remedy of any of the construction work found to be not in accordance with the contract.

**2.6.101 FINAL INSPECTION.** This inspection occurs after the Small Construction Business Contractor submits a request in writing to the Department for a Final Inspection and an application for final payment. The Department or its designee and the Small Design Business will

conduct a Final Inspection within ten (10) calendar days of the date of the Department's receipt of the request. If the Department and the Small Design Business concur that the Work is at substantial completion, the Small Design Business shall issue a certificate of completion and a final certificate for payment. In such case, the Small Design Business shall produce and deliver to the Contractor, at the Final Inspection, a list of uncompleted items and a reasonable cost of completion (Punch List). The Small Design Business shall submit Record Drawings to the Department of Labor and Industry (L&I) on the date of the Final Inspection in order to receive a certificate of occupancy by the L&I by Closeout Inspection.

**2.6.102 DEPARTMENT OF LABOR AND INDUSTRY "RECORD DRAWINGS".** The Small Design Business is responsible for submitting to the Department of Labor and Industry a revised set of construction documents for approval for changes made during construction that are not in accordance with the approved construction documents. This revised set of construction shall be referred to as "L&I Record Drawings" and shall be submitted in accordance with L&I UCC requirements.

**2.6.103 CONSTRUCTION AND MAINTENANCE DATA.** Prior to Final Inspection, the Small Design Business shall collect from the Prime Contractors, as provided in the Construction Documents, a rough draft of the Operation and Maintenance Instructions Manuals prepared by the Small Business Construction contractors. The Small Design Business shall review the rough draft for completeness including all pertinent shop drawings, diagrams, catalog data, manufacturers operating instructions, manufacturer's or supplier's maintenance instructions, certificates, warranties, guarantees and other pertinent operating and maintenance data. The Small Design Business shall indicate its approval of the rough draft with correction if necessary or request a revised draft and resubmission of the manual for the Small Design Business' review and approval. Upon receipt of the two (2) final bound manuals from each Prime Contractor, the Small Design Business shall review them for compliance with the requirements of the Contract Documents, and when the Manuals meet the Small Design Business' approval, the Small Design Business shall forward the two (2) copies to the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency).

## **2.7 ADDITIONAL SERVICES**

**2.7.100 ADDITIONAL SERVICES NOT COVERED BY COMPENSATION FOR BASIC SERVICES.** The Department shall clearly identify in the Design Contract all those services which are required on a Small Business project scope which are Basic Services. Those services are described in the Small Design Business Design Contract and will be designated as "included", meaning that it is included and shall be compensated as a part of Basic Services. Unless identified as included in Basic Services, the Additional Services described in the Small Design Business Design Contract are not covered by the Compensation for Basic Services. If requested in writing, and approved by the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) such Additional Services shall be the subject for additional compensation, as provided in this part. Compensation for Additional Services shall be in accordance with these General Conditions and the applicable Exhibit of the Small Design Business Design Contract.

## **2.8 UCC COMPLIANCE**

**2.8.100 COMPLIANCE DURING CONSTRUCTION.** This Project shall be subject to the Uniform Construction Code (UCC). The Small Design Business shall become familiar with and adhere to the UCC, including but not limited to site inspection procedures set forth in the Department of Labor and Industry's Inspection Procedures. The most recent list of inspections required by the Labor and Industry is located on the web at <http://www.dli.state.pa.us/landi/lib/landi/ucc/forms/ucc-9.pdf>. The Small Design Business, included under Basic Services, shall facilitate and make all site visits during construction required by the Pennsylvania Department of Labor and Industry Uniform Construction Code (UCC). Special inspections in accordance with the International Building Code (IBC). These site visits are an Additional Service to the number of meetings listed in the Small Design Business Design Contract.

## **ARTICLE 3**

### **THE DEPARTMENT'S RESPONSIBILITIES AND DUTIES**

**3.1.100 BASIC INFORMATION.** The Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) shall provide the Small Design Business with the Small Business project Scope and all available information as to the requirements of the Small Business project, including the amount of the Base Construction. If the information furnished is not sufficient for the initiation of the Schematic Submission, the Small Design Business shall immediately notify the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency).

**3.1.101 PLAT/SURVEY AND REPORT; DUE DILIGENCE IN INVESTIGATING CONDITIONS.** If there is any existing and available Plat or Survey of the site and sufficient adjacent lands, and a Report of Survey, the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) will furnish such information to the Small Design Business. Nothing in this paragraph shall relieve the Small Design Business from responsibility for investigating and determining the quality of such information provided by the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) and providing, when necessary, the performance of any additional Plat or Survey and exercising due diligence in investigating existing conditions.

**3.1.102 INTERPRETATION OF INSTRUCTIONS.** The Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) is the sole interpreter of any printed instructions, including the Bureau of Engineering and Architecture Project Procedure Manual.

**3.1.103 DEPARTMENT TO ACT PROMPTLY.** The Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) shall act with reasonable promptness upon all submissions and any failure of the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) to so act shall result in an extension of time to the Small Design Business under the current Time Schedule equal to the number of days of the delay. If the Small Design Business and the Director of the Bureau of Engineering and Architecture of the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) cannot agree upon the extension to be granted, the Deputy Secretary of Public Works shall make the final decision. Such extension of time is the only remedy for such delay. The Small Design Business is not entitled to any additional compensation as a result of such delay.

**3.1.104 EFFECT OF DEPARTMENT'S DECISION ON DESIGN WORK.** Any conditional acceptance, approval, or failure of the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) to disapprove or reject, design work submitted by the Small Design Business does not relieve the Small Design Business of its full responsibility to the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) for the proper and Small Design Business performance of all design work on various Small Business projects.

**3.1.105 DUTY TO REPORT.** Prompt notice shall be given by the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) if it actually becomes aware of any fault, defect, or inconsistency in various Small Business projects. However, failure to do so will not limit the responsibility of the Small Design Business to detect and address any fault, defect or inconsistency.

## **ARTICLE 4**

### **THE SMALL DESIGN BUSINESS' COMPENSATION AND PAYMENT**

**4.1.100 BASIS OF SMALL DESIGN BUSINESS' COMPENSATION.** The Small Design Business' compensation and payments for all submissions, the construction procurement services, and Small Business Construction contract administration services shall be the dollar value set forth in the Work Order. The dollar value shall be based upon a fixed percentage of the Base Construction Amount. Payments shall be made in accordance with the payment schedule established in this section.

**4.1.101 BASIS OF SMALL DESIGN BUSINESS' COMPENSATION FOR ADDITIONAL SERVICES.** Any services not designated as Basic Service in the Small Design Business Design Contract, which has been deemed by the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) as a necessary service for the completion of the Small Design Business Design Contract shall be compensated based upon a not-to-exceed value or lump sum payment.

- A. This fee shall be set as described in the Design Contract. In addition to the cost of the services of the Small Design Business' Consultant, the Small Design Business shall be compensated 10% of that value for performance of the Additional Services of the Small Design Business' Consultants and its application into the project.
- B. In the event an agreement cannot be reached, the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) may direct the Small Design Business to provide the Additional Services as a Work Order to the Small Design Business Design Contract at the amount specified by the Department(or the Funding Agency if the Tier 2 project is administered by the Funding Agency), in which case, the Small Design Business shall provide said services and shall keep a daily record of the services performed and its cost for performing the Additional Services. After the Additional Services authorized by the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) are completed by the Small Design Business or are terminated by the Department(or the Funding Agency if the Tier 2 project is administered by the Funding Agency), the Small Design Business may submit a request for cost incurred in performing the Additional Services to the Director of the Bureau of Engineering and Architecture (or the Funding Agency if the Tier 2 project is administered by the Funding Agency).

**4.1.102 SCHEDULE OF PAYMENTS DURING DESIGN.** The Small Design Business may invoice monthly for the percent complete for the design stage. The value of each design stage shall be calculated using the percentages below. When various Small Business projects are being designed and bid in multiple bid packages, payment for services in subsequent design phases is not contingent on the approval of a prior phase.

	<u>Payment</u>	<u>Aggregate</u>
A. Upon approval of the Schematic Submittal	20%	20%
B. Upon approval of Constr. Documents Submission	30%	50%
C. Upon award of Construction Contracts	25%	75%

**4.1.103 SCHEDULE OF PAYMENTS DURING CONSTRUCTION CONTRACT ADMINISTRATION.** Invoicing for this stage starts with the Initial Job Conference. Twenty percent (20%) of the Small Design Business' fee may be paid in monthly installments as follows:

- A. Balance of payment apportioned into two equal installments of 10%. The first installment may be paid after all submittals have been processed. The second installment may be paid upon the construction completion date.

<u>Payment</u>	<u>Aggregate</u>
20%	95%

**4.1.104 FINAL PAYMENT.** Upon acceptance and Small Design Business' Certificate of Final Completion and approval of the Record Drawings, and final resolution of all Small Business Construction contractor and Small Design Business claims, the Small Design Business' compensation will be paid in accordance with the schedule below:

<u>Payment</u>	<u>Aggregate</u>
5%	100%

At the Department's discretion (or the Funding Agency if the Tier 2 project is administered by the Funding Agency), it may release the Final Payment upon receipt of certificate of Final Completion and the DGS Record Drawings. Final payment by the Department does not constitute a waiver of claims by the Department or the Small Design Business.

**4.1.105 CHANGE ORDERS.** The services of the Small Design Business arising from a Change Order authorized by the Department or Funding Agency, which is not the result of the Small Design Business' error or omission, shall be compensated at the Basic Services Fee percentage established for various Small Business projects applied to the change order amount, with no reduction in Basic Services Compensation for Credit Change Orders. The Small Design Business shall invoice for payment for fees on Change Orders.

**4.1.106 NO FEES ON CLAIMS.** Under no circumstances, regardless of the cause, will the Small Design Business be paid a fee on any settlement agreement paid by the Department to a Contractor to settle an in-house claim or judgment awarded by the Board of Claims or any other court.

## **ARTICLE 5 – SMALL DESIGN BUSINESS' ACCOUNTING RECORDS**

**5.1.100 RECORDS.** The Small Design Business shall keep and maintain a record of the following expenses using generally acceptable accounting principles: direct personnel costs, Consultant costs and all other expenses pertaining to various Small Business projects. Such records shall be available to the Department at the Small Design Business' office for inspection and copying at mutually convenient times for a period of at least 3 years beyond completion or termination of the contract.

**5.1.101 RECORDS OF ADDITIONAL SERVICES.** Cost incurred by Small Design Business for providing Additional Services shall be kept separate and apart from all other project costs. Such records shall be available to the Department at the Small Design Business' office for inspection and copying at mutually convenient times for a period of at least three (3) years beyond completion or termination of the contract.

## **ARTICLE 6 – SUBMITTALS**

**6.1.100 APPROVAL OF SUBMITTALS.** The Small Design Business agrees that time is of the essence with regards to review and decision-making for submittals. Therefore, the Small Design Business shall return the approved submittals, or detailed notation for resubmission if required, within fourteen (14) calendar days of receipt, unless a different period is approved by the

Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency). The fourteen day period consists of the time from the Small Design Business' receipt of the submittal to the time of the date that the Small Design Business returns the submittal. If the receipt of the submittals is late by the approved schedule, the Small Design Business shall endeavor to meet the schedule for acting upon the submission, but shall have the submission delivered no later than within fourteen (14) calendar days after receipt. Nothing in this paragraph relieves the Small Business Construction Contractor from its responsibility for a late submission.

**6.1.101 CONTRACTOR COORDINATION OF APPROVED SUBMITTALS.** Each Prime Contractor shall be responsible for reviewing other Prime Contractors' approved submittals for consistency and interface with its work. Any exception taken to the content of another Small Business Construction contractor's approved submittal must be formally presented to that Prime Contractor, the Small Design Business, and the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency) within seven (7) calendar days of the Prime Contractor's receipt of the approved submittal. The Small Design Business shall work with Prime Contractors to resolve these discrepancies. Nothing in this paragraph relieves the Prime Contractors from their responsibilities to coordinate their work with the other Prime Contractors.

**6.1.102 CORRECTIONS TO SUBMITTALS.** The Small Design Business shall review and approve or disapprove or take other appropriate action on any resubmissions within ten (10) calendar days of its receipt, unless a different period is approved by the Department (or the Funding Agency if the Tier 2 project is administered by the Funding Agency). The ten (10) calendar day period is the time from the date of receipt of the resubmission to the date that the Small Design Business sends the resubmission.

**6.1.103 EFFECT OF APPROVAL.** The Small Design Business' review and approval is only for conformance with the Program of the project and with the information given in the Contractor Documents. The Small Design Business' approval of a separate item does not indicate approval of an assembly in which the item functions. The Small Design Business' approval of submittals does not relieve the Small Business Construction contractor of responsibility for any deviation from the Contract Documents, unless the Small Business Construction contractor has informed the Small Design Business in writing of such deviation at the time of submission, has noted the deviation on the submittals, and the Small Design Business has given written approval of the specific deviation.

**6.1.104 RECORDS OF SUBMITTALS.** The Small Design Business shall keep and maintain a detailed log as to date of receipt of the submittals and date of return with adequate notes as to their disposition.

**6.1.105 FAILURE TO ADHERE TO SCHEDULE.** If the Small Design Business fails to comply with the time provisions of this section or fails to act in a timely manner, the Department reserves its rights at a later date to assess damages attributable to the Small Design Business' delays in approving the submittals. Any reduction in the Small Design Business' compensation shall not be the Department's sole remedy for damages caused by the delay of the submittal approval.

## **ARTICLE 7 – SMALL DESIGN BUSINESS' RESPONSIBILITY FOR CONSULTANTS, OBSERVANCE OF LAWS AND COOPERATION WITH LOCAL BODIES, AND INSTRUCTION REGARDING PROPRIETARY ITEMS**

**7.1.100 RESPONSIBILITY.** The Small Design Business is responsible for preparing the Drawings and Specifications in compliance with all applicable permits, laws, regulations and ordinances of all commissions, agencies and government (federal, Pennsylvania and local), insofar as they are applicable to, and have jurisdiction over various Small Business projects. The Small Design Business shall make all required submittals to, and shall obtain all required approvals from, the applicable agencies in a timely manner so as not to cause delays to various Small Business projects.

**7.1.101 COOPERATION WITH LOCAL BODIES.** During the design of various Small Business projects, the Small Design Business shall keep informed of and comply with the requirements of all local zoning, planning and supervisory bodies. If these requirements change during the course of a Small Business project, or should any required approvals be withheld by the local bodies, the Small Design Business shall immediately notify the Department.

**7.1.102 PROPRIETARY ITEMS, COPYRIGHTS, PATENTS.** The Small Design Business shall not include in the design of any Small Business projects any equipment, material or mode of construction which is proprietary or which contains a copyright or patent right relating to designs, plans, drawings or specifications, unless the equipment, material or mode of construction is required to meet the unique circumstances of a Small Business projects. If the Small Design Business includes in the design of any Small Business projects any equipment, material or mode of construction which is proprietary, it shall have prior approval by the Department. Approval of a proprietary item will only be given because the item is required to meet the unique circumstances of a Small Business project, and shall not be given for the purpose of preventing or restricting competitive bidding.

## **ARTICLE 8 – INSURANCE**

**8.1.100 SMALL DESIGN BUSINESS LIABILITY INSURANCE.** The Small Design Business shall secure and maintain, at its sole cost and expense, Professional Liability Insurance to protect against loss resulting from design errors and omissions, failure to coordinate properly the Drawings and Specifications of various Small Business projects, and failure to properly execute the construction administration duties for various Small Business projects.

- A. Unless otherwise specifically provided in the Small Design Business Design Contract, the Small Design Business shall be required to secure and maintain Professional Liability Insurance with a minimum coverage of \$1,000,000 or otherwise acceptable to the Department.
- B. The Small Design Business is required to secure and maintain Professional Liability Insurance up to and including one year after the date of the last Closeout Inspection of the Work under various Small Business projects.

**8.1.101 GENERAL LIABILITY INSURANCE.** The Small Design Business shall secure and maintain, at its sole cost and expense, adequate General Liability Insurance to indemnify, protect and hold harmless the Department and its employees against claims arising out of the Small Design Business' services during the design and construction of various Small Business projects for damages in law or equity for property damage and personal injury, including wrongful death. The Department shall be named as an additional insured in the policy and the Small Design Business shall submit a certified copy of the entire policy to the Department, prior to the Department's submission of the executed Small Design Business Design Contract to the Small Design Business. The limits of coverage shall be acceptable to the Department. The Small Design Business is required to secure and maintain General Liability Insurance up to and including the submission of Record Drawings and a Certificate of Final Completion of the last completed Small Business project.

**8.1.102 CERTIFICATE OF INSURANCE.** The Small Design Business shall return to the Department with the signed Small Design Business Design Contract, a Certificate of Insurance from an Insurance Carrier authorized to do business in Pennsylvania. The Certificate shall be furnished annually, unless otherwise requested, and shall indicate the following:

- A. Existence of the insurance required under this Article;
- B. Amount of the deductible; and
- C. The amount of coverage of such insurance.

The Small Design Business shall submit a Certificate of Insurance covering the Small Design Business Liability Insurance requirement for at least one year beyond the date the Small Design Business executes the Small Design Business contract. **This certificate shall contain a provision that coverages afforded under the policies will not be canceled or changed without giving sixty (60) days prior written notice to the Department.**

**8.1.103 UNACCEPTABLE INSURANCE COMPANY.** If any insurance company providing the required coverage become unsatisfactory to the Department, the Small Design Business shall promptly furnish such additional insurance coverage as may be required to protect the interest of the Department.

**8.1.104 FAILURE TO COMPLY WITH INSURANCE REQUIREMENTS.** During any period in which the Small Design Business is not in compliance with the terms of this Article, no compensation shall be paid by the Department to the Small Design Business, and such failure to comply will result in the issuance of a notice of default to the Small Design Business.

## **ARTICLE 9 – TERMINATION OF SMALL DESIGN BUSINESS DESIGN CONTRACT AND SUSPENSION OF WORK THEREUNDER**

### **9.1 TERMINATION**

**9.1.100 TERMINATION FOR CONVENIENCE OF THE DEPARTMENT.** The Department shall have the right at any time for any reason, to terminate the Small Design Business Design Contract and/or any Work Order by written notice, which termination shall be effective as provided in said notice. The Small Design Business shall comply with all reasonable instructions of the Department then or subsequently given, relating to such termination, including but not limited to: instructions concerning delivery of drawings, sketches, and other architectural/engineering data to the Department; discontinuance of the Services on outstanding contracts; and furnishing to the Department information concerning all action to be taken respecting outstanding agreements with consultants, contracts, awards, orders or other matters. The Department may inform the Selection Committee regarding an explanation of the termination of a Small Design Business who has been terminated by reason of convenience.

**9.1.101 TERMINATION UPON DISABILITY OF SMALL DESIGN BUSINESS.** In the event of death or mental or physical disability of Small Design Business, or the Small Design Business' inability to complete the Small Design Business Design Contract for any other reason over which Small Design Business has no control including military mobilization, or dissolution of the Small Design Business firm, the Department may terminate the Small Design Business Design Contract by written notice, which termination shall be effective as provided in said notice, and select and employ a new Small Design Business to complete the Services. The Small Design Business or its personal representative shall comply with all reasonable instructions of the Department then or subsequently given, relating to such termination, including but not limited to: instructions concerning delivery of drawings, sketches, and other architectural/engineering data to the Department; discontinuance of the Services on outstanding contracts; and furnishing to the Department information concerning all action to be taken respecting outstanding agreements with Small Design Business' Consultants, contracts, awards, orders or other matters.

**9.1.102 TERMINATION FOR DEFAULT OF SMALL DESIGN BUSINESS.** The Department may terminate this Small Design Business Design Contract for any material default of the Small Design Business, including default in making submissions or failing to take action within the time limits specified in the Small Design Business Design Contract, by providing written notice to the Small Design Business. The notice shall apprise the Small Design Business that it shall cure the default within a period of not less than ten (10) days from the date of the letter of default and that failure to do so will result in termination by default of the Small Design Business. The Small Design Business shall comply with all reasonable instructions of the Department then or subsequently given, relating to such termination, including but not limited to: instructions concerning delivery of drawings, sketches, and other architectural/engineering data to the Department; discontinuance

of the Services on outstanding contracts; and furnishing to the Department information concerning all action to be taken respecting outstanding agreements with Small Design Business' Consultants, contracts, awards, orders or other matters. The Department may refer a Small Design Business **who has been terminated by reason of default to the Contractor Responsibility Program relating to suspension and debarment. A copy of such notice of default shall also be sent to the Small Design Business Selections Committee.**

**9.1.103 ADJUSTMENT OF COMPENSATION UPON TERMINATION.** Upon termination of the Small Design Business Design Contract, as herein provided, the compensation of the Small Design Business shall be adjusted in accordance with the following:

- A. If the Small Design Business Design Contract is terminated for any reason except the material default by the Small Design Business, at any time during the course of any Design Submission or the Construction Procurement Services Stage, all obligations of the Department to the Small Design Business shall be discharged by the payment to the Small Design Business of all sums due and unpaid in respect of all completed design phases.
- B. If the Small Design Business Design Contract is terminated at any time during the Construction Contract Administration Stage, for any reason except the material default by the Small Design Business, the obligation of the Department to the Small Design Business shall be discharged by the payment of the installments due at the time such termination occurs.
- C. If the Small Design Business Design Contract is terminated by reason of death or incapacity of the Small Design Business, all payments due and owing shall be made to the Small Design Business' personal representative for a sole proprietorship or to the company/partnership which employed the deceased or incapacitated Small Design Business. If the Small Design Business Design Contract is terminated by reason of the liquidation of a partnership or the dissolution of a corporation, payment shall be made in accordance with the articles of dissolution.
- D. If the Small Design Business Design Contract is terminated by reason of a material default of the Small Design Business, continuing for the period specified in the written notice of such default and demand for cure, the only payments which may be made shall be for Services deemed completed and acceptable at the time of termination, otherwise no further payments will be made until the Department has engaged another Small Design Business to complete various Small Business projects. If another Small Design Business is engaged, the cost to the DEPARTMENT of the compensation and expenses of such other Small Design Business will be deducted from the remainder of the compensation otherwise payable to the Small Design Business for completion of the Services under the Small Design Business Design Contract. If the costs of furnishing the Services which the Department has incurred in accordance with the Small Design Business Design Contract exceed the Contract Sum for the completion of the Services, the Small Design Business shall pay the difference to the Department.

## **9.2 SUSPENSION**

**9.2.100 SUSPENSION OF WORK.** The Department may, at any time, direct the Small Design Business in writing to suspend all work on various Small Business projects, or any part thereof, pending receipt of further notice from the Department. In all such cases the Department and the Small Design Business shall agree upon an appropriate phasing out of the Services, or any part thereof, in such a manner that the work may be resumed with a minimum of added cost to the Department.

**9.2.101 PAYMENT DURING SUSPENSION.** When Services are suspended, compensation shall be paid for all Services provided to the date of suspension, but no additional compensation shall be

paid during the period of suspension. If various Small Business projects are suspended due to the fault of the Small Design Business, including failure to design within the allocation, no further payments shall be made.

## **ARTICLE 10 – OWNERSHIP OF DOCUMENTS**

**10.1.100 DEPARTMENT OWNS DOCUMENTS.** All design concepts, preliminary, feasibility and special studies, design calculations, Contract Drawings and Specifications, Special Conditions, Statements of Probable Construction Costs, and all other data, samples and surveys compiled by the Small Design Business or its Consultants under this Small Design Business Design Contract, become the sole property of the Department. Such documents may be used by the Department for any desired purpose without any compensation to the Small Design Business.

**10.1.101 PATENTS, COPYRIGHTS, LICENSES, AND OWNERSHIP OF DOCUMENTS.** All proprietary materials and methodologies brought by the Small Design Business to various Small Business projects and all documents, sketches, drawings, designs, works, papers, files, reports, computer programs, data, computer documentation and other tangible materials authored and prepared by Small Design Business as the work product covered in the Work Order shall be treated in accordance with the following principles:

- A. **PATENT OWNERSHIP:** Small Design Business and its Subconsultants shall retain ownership to patentable items, patents, processes, inventions of discoveries (collectively the “PATENTABLE ITEMS”) made by the Small Design Business during the performance of this Small Design Business Design Contract. Notwithstanding the foregoing, the Department is granted a non-exclusive, non-transferable, royalty free license to use or practice the PATENTABLE ITEMS. **The Department may disclose to third parties any such PATENTABLE ITEMS made by Small Design Business or any of its Subconsultants under the Work Order for various Small Business projects that have been previously publicly disclosed.** The Department understands that any third party disclosure will not confer any license under such PATENTABLE ITEMS.
- B. **COPYRIGHT OWNERSHIP – OWNERSHIP OF MATERIALS DEVELOPED AS PART OF THE WORK ORDER FOR VARIOUS SMALL BUSINESS PROJECTS:** All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, data, computer documentation and other tangible materials authored and prepared by Small Design Business as the Work Product covered in the Work Order for various Small Business projects (collectively the “Works”) including Works developed by Subconsultants are the sole and exclusive property of the Department and shall be considered works made for hire under the federal Copyright Act of 1976, as amended. (Copyright Act). In the event that such Works do not fall within the specifically enumerated works that constitute works made for hire under the Copyright Act, Small Design Business agrees to assign and, upon their authorship or creation, expressly and automatically assigns all copyright interests, proprietary rights, trade secrets, and other right, title and interest in and to such Works to the Department. The Department shall have all rights accorded a holder of copyright under the Copyright Act including, but not limited to, the exclusive right to reproduce the Works in copies, the right to distribute copies by sale or other transfers, the right to register all copyrights in its own name as author in the United States and in foreign countries, the right to prepare derivative works based upon the WORKS, the right to display the WORKS and the right to perform the work digitally. Upon completion or termination of this Small Design Business Design Contract, all working papers, files and other documentation shall immediately be delivered by Small Design Business to the Department. Small Design Business warrants that the Works are original and do not infringe the rights of any other work.

- C. SMALL DESIGN BUSINESS LICENSE: Notwithstanding the foregoing, Small Design Business and any Subconsultants shall retain a royalty free non-exclusive license to reproduce such Works for internal use and to have such Works published for any academic purpose including, but not limited to, publication as part of any thesis or dissertation or journal article. This license is conditioned on the SMALL DESIGN Business' and the Subconsultants' compliance with the provisions of the intellectual property laws of the United States. All copies of reproductions and publications made pursuant to this License shall bear appropriate proprietary notices.
- D. PREEXISTING MATERIALS BROUGHT BY THE SMALL DESIGN BUSINESS TO VARIOUS SMALL BUSINESS PROJECTS: The Department shall have no ownership rights to Small Design Business' proprietary materials, data, software, methodologies or other intellectual property that Small Design Business brings to various Small Business projects or has previously developed with or obtained from third parties ("Small Design Business Property");
- E. FEDERAL GOVERNMENT INTERESTS: It is understood that certain funding under this Small Design Business Design Contract may be provided by the Federal government. Accordingly, the rights to Works or Patentable Items of Small Design Business or Subconsultants hereunder will be further subject to government rights as set forth in 37 C.F.R. Section 401, and other applicable statutes. Notwithstanding the foregoing, the Department retains the right to share information relating to WORKS or Patentable Items developed under the Work Order for a wholly state-funded contract with the Federal Government.

## **ARTICLE 11 – PROVISIONS REQUIRED BY LAW TO BE INSERTED**

**11.1.100 PROVISIONS DEEMED INSERTED.** Each and every provision required to be inserted in Small Design Business Design Contract by the law of Pennsylvania, or the lawful regulations of any agency of the Commonwealth are included in the Small Design Business Design Contract by reference, and the Small Design Business Design Contract shall be read, interpreted and enforced as if such provisions were set forth herein in full. If various Small Business projects involves the use of federal funds, each and every provision required to be inserted by any law of the United States of America or the lawful regulations of any federal agency thereof applicable to the Small Design Business Design Contract, are included in the Small Design Business Design Contract by reference, and the Small Design Business Design Contract shall be read, interpreted and enforced as if such provisions were set forth herein in full.

**11.1.101 NONDISCRIMINATION AND SEXUAL HARASSMENT CLAUSE.** So long as this Small Design Business Design Contract is in effect, the Small Design Business agrees to the terms of the Nondiscrimination and Sexual Harassment Clause attached hereto as an Exhibit. For purposes of this Small Design Business Design Contract, the word "Contractor" in these provisions means "Small Design Business."

**11.1.102 CONTRACTOR INTEGRITY PROVISIONS AND DISCLOSURE OF FINANCIAL INTEREST.** So long as this Small Design Business Design Contract is in effect, the Small Design Business agrees to the Contractor Integrity Provisions attached hereto as an Exhibit. For purposes of this Small Design Business Design Contract, the word "Contractor" in these provisions means "Small Design Business."

**11.1.103 CONTRACTOR DEBARMENT PROVISIONS.** The Small Design Business agrees to the Contractor Debarment Provisions, included in and made a part of this Small Design Business Design Contract, Certification and Stipulations Related to Debarment. For purposes of this Small Design Business Design Contract, the word "Contractor" in these provisions means "Small Design Business."

**11.1.104 AMERICANS WITH DISABILITIES ACT (ADA) PROVISIONS.** The Small Design Business agrees to the ADA Provisions attached hereto as an Exhibit.

**11.1.105 TRADE PRACTICES ACT PROVISIONS.** The Small Design Business agrees to the Trade Practices Act Provisions attached hereto as an Exhibit.

**11.1.106 TAX LIABILITY PROVISIONS.** The Small Design Business agrees to the Tax Liability Provisions, included in and made part of this Small Design Business Design Contract as an Exhibit. For purposes of this Small Design Business Design Contract, the word "Contractor" in these provisions means "Small Design Business."

**11.1.107 ENVIRONMENTAL STATEMENT.** According to the Commonwealth Procurement Code, Act of May 15, 1998, P.L. 358, No. 57, 62 Pa.C.S. §§ 101-4509, all invitations for bids for construction projects issued by any government agency shall set forth any provision of Federal and State statutes, rules, and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect various Small Business projects.

**11.1.108 STEEL PRODUCTS PROCUREMENT ACT.** The Small Design Business may not knowingly list as acceptable any item which cannot comply with the Steel Products Procurement Act.

## **ARTICLE 12 – SMALL DESIGN BUSINESS AND CONSULTANT RELATIONSHIP**

**12.1.100 SMALL DESIGN BUSINESS AND CONSULTANT RELATIONSHIP.** The Small Design Business must enter into a Small Design Business Design Contract with each of Small Design Business' Consultants deemed necessary for the proper design of various Small Business projects. The relationship between the Small Design Business and the Small Design Business' Consultants limits the participation of the Small Design Business' Consultant as follows:

- A. Small Design Business' Consultant may not individually or as a firm submit a bid directly or indirectly to the Commonwealth, to any Prime Contractor, Sub-contractor or any Contractor or firm submitting a bid on a project on which the Small Design Business' Consultant has provided design or technical services.
- B. Small Design Business' Consultant may not individually or as a firm have any personal interest or holding in any firm or company that bids as a Prime Contractor, Subcontractor or Sub-sub-contractor, submitting a bid on a project on which the Small Design Business' Consultant has provided design or technical services.
- C. Small Design Business' Consultant may not individually or as a firm have any personal interest or holding, in any firm that bids as a manufacturer, distributor or supplier on any project on which the Consultant has provided design or technical services.
- D. During Design Stages, if the Small Design Business desires to change any Small Design Business' Consultant, it shall obtain written approval by the Department.

Small Design Business' Consultant must immediately inform the Department of any current or former Commonwealth employees on its payroll. The names of former employees who have not been employed by the Commonwealth within the last twelve (12) months need not be disclosed.

**12.1.101 SMALL DESIGN BUSINESS' CONSULTANT PAYMENT.** Performance by Small Design Business' Consultant in accordance with the provisions of a contract shall entitle the Small Design Business' Consultant to prompt payment from the Small Design Business with whom the Small Design Business' Consultant contracted.