

## **Part IV Chapter 9 Small Business Design and Construction Programs**

### **A. Definitions.**

1. "Construction" includes maintenance, alteration, repairs, renovation, improvements, building and demolition.
2. "Project" includes all work necessary to complete the entire scope of work, including all design services, general construction, hazardous material removal, fire suppression, elevator, HVAC, plumbing and electrical work.

### **B. Scope.**

1. All commonwealth agencies under the governor's jurisdiction are required to identify and set aside contracts for DGS' Small Business Procurement Initiative ("the Program"). An Agency Funded Construction Project with an estimated total project value between **\$10,001 and \$299,999** is considered a Small Business Construction Program project and shall be:
  - a. Established by the Funding Agency; and
  - b. Designed and paid for as discussed in detail in this chapter; and
  - c. Bid and awarded by DGS; and
  - d. Inspected and paid for as discussed in detail in this chapter.
2. Agencies awarding contracts under §301(c) of the Commonwealth Procurement Code shall, pursuant to the Governor's Executive Order 2011-09, identify contracts for award to Small Businesses. In doing so, agencies shall coordinate with the Department of General Services to ensure adherence to standards of qualification and other related policy issues.

### **C. Exclusions.**

1. A project with 100% of the design and labor performed by Commonwealth employees within your own agency is not subject to this Chapter. The Agency shall document this exclusion in the project file.
  - a. Any Agency using in-house design staff must ensure that employees are properly qualified to estimate costs and stamp and/or seal the design.
  - b. Under no circumstances will any DGS employee stamp or seal Small Business project design drawings for another Funding Agency.
  - c. The No-bid Procurement Process may not be used to avoid setting forth the full scope of work for the project nor may it be used to supplement the scope outside the Program. (For example, an agency may not use the No-Bid Procurement process to obtain design professional services, cost estimating services, to obtain the

- electrical services to provide power to a Small Business Construction Program project built by a general contractor or to obtain construction inspection services.)
- 2.** The following contracts, regardless of dollar value, are not encompassed within the scope of this Chapter:
    - a.** Emergency work; or
    - b.** Sole source procurements; or
    - c.** Leasehold improvements; or
    - d.** Historic Preservation work; or
    - e.** Capital facilities funded projects (bond issue); or
    - f.** As otherwise approved for exemption by the Secretary of the Department of General Services, Deputy Secretary for Public Works or designee.
  - 3.** If the Secretary of the Department of General Services, Deputy Secretary for Public Works or designee, or delegated agency determines that there are no Small Construction Businesses available to bid the project or that all bidders are non-responsive, then DGS shall prepare an Agency Exemption Memo which explains the circumstances that exempt the project from the Small Business program.
    - a.** The Secretary, Deputy Secretary for Public Works or designee, will provide a copy of every Exemption Memo to DGS' Director of Bureau of Small Business Opportunities within five days of the date of the decision to exempt the project.
  - 4.** Work under a Service Contract for repair and preventative maintenance defined as follows:
    - a.** Repair – Work performed on existing equipment or system for the purpose of a break/fix nature and includes the replacement of like parts/components in order to return the equipment or system to working order. This work cannot include replacement of the entire equipment/system or change or alter the equipment/system as it relates to its size, type, and capability.
    - b.** Preventative Maintenance – Work performed on a routine basis, such as the cleaning and testing of equipment or systems and component parts for the purpose of allowing the equipment or system to continue operating in the expected manner.
  - 5.** Work under a Service Contract which requires a Certified Contractor to perform the work on the equipment or system.
  - 6.** Warranty issues which require the use of a specific contractor.

**The Agency shall document any exclusion under Section C in the project file.**

**D. General**

- 1. Small Business Procurement Initiative.** DGS will operate and maintain the Small Business Procurement Initiative website, which provides lists of self-certified Small Construction Businesses and Small Design Businesses. Only self-certified Small Construction Businesses and self-certified Qualified Small Design Businesses are eligible to design and bid on construction projects outlined in this Chapter.
- 2. Separations Act.** In accordance with Section 322(6) of the Commonwealth Procurement Code, construction contracts where the total project construction costs are equal to or greater than \$25,000 are subject to the requirements of the Separations Act. This act requires that HVAC, plumbing and electrical contract work must be separated from the work to be performed by general contractors.
- 3. Public Works Employment Verification Act.** In accordance with 43 P.S. §§ 167.1-167.11 and 4 PA Code § 66, construction contracts where the total project construction costs are greater than \$25,000 are subject to the requirements of the Public Works Employment Verification Act. This act requires all contractors and subcontractors to utilize the federal government's E-Verify® system to ensure that, prior to being awarded a public works contract, and through duration of the public work contract, all employees are authorized to work in the United States. On projects where the Act applies, all contractors are to provide the Verification Form prior to being awarded a contract and all subcontractors of every tier are to provide the Verification Form prior to commencing work on the project. Additional information and documents are available at [DGS website](#).
- 4. Pennsylvania Prevailing Wage Act & Federal Davis-Bacon Act**
  - a.** To the extent any Small Business project has federal funds involved, the Davis-Bacon Act may apply. Davis-Bacon Act applies to contracts in excess of \$2,000 for the construction, alteration and/or repair, including painting and decorating of a public building or public work.
  - b.** DGS will obtain and include applicable wage rates in bid packages on any Small Business project.
- 5.** In accordance with §3931 of the Commonwealth Procurement Code (**Prompt Payment Schedule**), the performance of Small Business Construction Program contracts and subcontracts under this Program are subject to the full requirements of the Prompt Payment Schedule requirements. Performance of Work in accordance with the terms of the construction contract entitles the Small Business Contractor to timely payment by DGS or the Agency. In addition, performance by a subcontractor in accordance with the terms of the contract entitles the subcontractor to payment from the Small Business Contractor.

## 6. Funding.

- a. **Federally Related Project.** Any agency-funded construction project for which expenses will be applied, directly or indirectly, to a federal program as either the state or federal share of the federal program.
- b. **Restricted Receipt Account.** Funds designated for a specific purpose, which, when received, are deposited and held in a trust capacity in the General Fund and, to a limited degree, in certain special funds. Disbursements of these funds are not normally reflected as expenses of state government. For the purpose of this directive, "restricted receipt account" refers to the account created by Expenditure Symbol Notification Number 96-38 to receive revenue to fund non-federally related agency-funded construction projects. An exemption to the provisions of [\*Management Directive 310.9, Purpose and Use of Restricted Receipt and Restricted Revenue Accounts\*](#) has been granted by the Office of the Budget to allow for the use of general ledger (GL) accounts other than GL account range 6910000-6919999 (non-expense items) for payments made from this restricted receipt account.
- c. DGS will accept agency-funded construction projects funded with monies from up to two state fiscal years. Projects that require funding from more than two fiscal years must be reviewed by the agency to determine if the project can be completed in phases or if it should be classified as a capital project.
- d. Agency-funded construction projects shall be awarded in a manner that ensures continuity of the project with current funds available.
  - i. For non-federally related agency construction projects: Of the first year funding transferred by the using agency, 10 percent shall be used as contingency funds available for the project. If any contingency funds remain available at the beginning of the second year, those funds can be used to meet the original contract obligations, provided that the second year funding transferred provides for the remaining contingency funds required.
  - ii. For federally-related agency construction projects: The agency must project the anticipated expenditures in the first year and ensure that sufficient funds are available to make prompt payments to the construction contractor.

## 7. Bid Security and Performance Securities.

The following bid securities and performance securities are established for Small Business Construction Program projects:

- i. **The Department will not require a Bid Bond for any contract estimated less than \$25,000.**

**ii. The Department will require a 10% Bid Bond for any contract estimated at \$25,000 or more.**

**iii. The Department will require a Payment and Performance Bonds as provided in the Bid Proposal package from the successful Small Construction Business in the amount of 100% of the contract award value for all awarded contracts \$25,000 or more.**

- 8. Insurance** requirements are set forth in the General Conditions of the Contract. At a minimum, the Small Construction Business or Small Design Firm must have General Liability insurance and Workers' Compensation insurance in amounts adequate to perform the Work in compliance with applicable law.

## **E. Procedure to Establish Project and Obtain Survey Cost Estimate**

### **1. Agency**

- a.** Prepares and submits the Agency Work Request to DGS' Director of Bureau of Professional Selections and Administrative Services. The Agency Work Request shall include a Survey Cost Estimate. The Survey Cost Estimate must include:
- i.** The Agency's defined project scope that includes all the work necessary for the project including all disciplines and trades; and
  - ii.** An estimated project cost that includes any design costs, permit costs, construction costs and contingency costs;
  - iii.** An estimated project timeline in terms of days or weeks;
  - iv.** Indication of funding source (federal, non-federal); and
  - v.** Designation as In-house Agency employee design or a request for DGS to select a Small Design Business.
- b.** If the Agency is unable to prepare a Survey Cost Estimate, then the Agency shall submit the Agency Work Request, indicating a \$5,500 Fund Reservation, document type GS, number series 48\* approved by the Comptroller so that DGS can proceed to select a Small Design Business to perform the Survey Cost Estimate. The Agency Work Request shall include:
- i.** The Funding Agency's defined project scope that includes all the work necessary for the project including all disciplines and trades; and
  - ii.** A budgeted project cost that includes any design costs, permit costs, construction costs and contingency costs;

- iii. An estimated project timeline in terms of days or weeks;
- iv. Indication of funding source (federal, non-federal); and
- v. A request for DGS to select a Small Design Business to perform the Survey Cost Estimate.

## 2. DGS

- a. Receives Agency Work Request and assigns a DGS project number and DGS project coordinator to the project.
  - i. If the agency is unable to prepare the Survey Cost Estimate with agency staff, DGS will select a Small Design Business to perform the Survey Cost Estimate and will administer the Work Order.
- b. Upon receipt of the Survey Cost Estimate DGS will review and;
  - i. If the Survey Cost Estimate was prepared by the Agency and is:
    - 1. Acceptable to DGS, design may proceed in accordance with Sections G or H;
    - 2. Unacceptable to DGS, returns the Survey Cost Estimate to the Agency to address comments or concerns that formed the basis for DGS' rejection.
  - ii. If the Survey Cost Estimate was prepared by a Small Design Business and is;
    - 1. Acceptable to DGS and the Agency, design may proceed in accordance with Sections G or H;
    - 2. Unacceptable to DGS, returns the Survey Cost Estimate to the Small Design Business to address comments and concerns.
- 3. **Agency:** Within 30 days of the receipt of acceptable Survey Cost Estimate, notifies DGS of intent to proceed or cancel the project.

## F. Construction Administration Determination

- 1. DGS will administer construction of all Small Business Projects with an estimated construction value in excess of \$10,001.
- 2. As of the date of DGS' acceptance of the Survey Cost Estimate for a Small Business Project with an estimated construction value between \$10,001 and \$299,999 DGS will make the decision as to whether DGS or the Agency will administer construction and DGS will notify the Agency accordingly.

3. Design will proceed in accordance with Sections G or H.

**G. Commonwealth Employee Design Process for Small Business Construction Program Projects (if applicable)**

**1. Agency**

- a. Using only Agency employees, designs Small Business project (i.e., project value up to \$100,000) in accordance with the DGS Small Design Business Project Manual which requires the Agency, at a minimum, to:
  - i. Seal and/or stamp the drawings; and
  - ii. Obtain PA Department of Labor & Industry approval and all other necessary approvals; and
  - iii. Ensure compliance with all applicable Federal, State, and local laws including land use and zoning; and
  - iv. Stay within the Survey Cost Estimate costs for construction, ensuring at least a 10% construction contingency.
- b. Submits the Small Business final design package to DGS for determination on compliance with Small Design Business Project Manual, and readiness for bid.
  - i. If, at any point during the design process, the Agency determines that in-house staff cannot proceed with or complete the design, or the project value is expected to exceed \$100,000, then:
    1. The Agency must notify DGS of their intent to alter the process through the submission of an amended Work Request; and
    2. The project will become a Small Design Business project and start from the first step of the Small Design Business Process set forth in Section H.

**H. Small Design Business Selection Process (if applicable)**

**1. Agency**

- a. If the Agency will be administering construction on the Small Business Construction Program project, DGS will select the Small Design Business and prepare the Work Order which will be forwarded to the Agency for execution as discussed below in 3(b). No funding for design or construction will be forwarded to DGS.
- b. For all Small Business projects where DGS will be administering construction, prepares the Amended Work Request and forwards it to

the Comptroller for certification of funding based upon the Survey Cost Estimate. The Amended Work Request shall include the:

- i. DGS Project Number; and
- ii. Fee for the design services as a total dollar value; and
- iii. Construction costs; and
- iv. A minimum of 10% contingency based on the Survey Cost Estimate; and
- v. SAP Funds Reservation number, created by Agency budget staff, utilizing SAP transaction FMX1, document type GS, number series 48\* for all fees; and
- vi. DGS jurisdiction over the property for purposes of the construction.

## 2. Comptroller

- a. Certifies funds, posts the Fund Reservation, and forwards Amended Work Request to DGS.

## 3. DGS

- a. Upon receipt of Comptroller's certification of funds, determines, based upon the Survey Cost Estimate, which Small Design Business selection process is applicable to the project.
  - i. If the Small Design Firm can be selected in accordance with **§514** of Commonwealth Procurement Code ("CPC"), the Secretary of the Department of General Services, or designee, will select a self-certified, properly qualified Small Design Firm utilizing the following selection criteria:
    1. Equitable distribution of work orders; and
    2. Particular capability to perform the project design; and
    3. Geographic proximity of the firm to the proposed facility; and
    4. Selected firm has the necessary available personnel to perform the services required by the project; and
    5. Any other relevant circumstances peculiar to the proposed work order.
  - ii. If the Small Design Firm must be selected through the DGS Selections Committee process in accordance with **§905** of the Procurement Code, the Secretary of the Department of General Services, Deputy Secretary for Public Works or designee,



selects the Small Design Business from the three firms short listed by the DGS Selections Committee utilizing the following selection criteria:

1. Equitable distribution of work orders; and
  2. Particular capability to perform the project design; and
  3. Geographic proximity of the firm to the proposed facility; and
  4. Selected firm has the necessary available personnel to perform the services required by the project; and
  5. Any other relevant circumstances peculiar to the proposed work order.
- b. After selection of the Small Design Business, prepares the Small Design Business Work Order. The dollar value of the Work Order, the percentage fee on change orders and the lump sum for site visits are non-negotiable between DGS and the Small Design Business and are not subject to amendment by the Agency. The Work Order will establish, at a minimum:
- i. the scope of work; and
  - ii. the construction amount; and
  - iii. the pre-established fee, which will not be subject to negotiation; and
  - iv. the percentage fee to be payable on change orders, which will not be subject to negotiation; and
  - v. the design schedule, which shows completion of the design within 90 days from issuance of the Work Order; and
  - vi. lump sum payable for additional site visits.

**I. Issuance and Management of the Small Design Business Work Order (if applicable)**

**1. DGS**

- a. If the Agency will be administering construction and issuing the Work Order to the Small Design Business, then DGS forwards the DGS-prepared Small Business Design Work Order to the Agency for execution.
- b. If DGS will be administering construction and issuing the Work Order to the Small Design Business, then DGS will create the SAP Purchase Order, Type CPA4.

## **2. Agency**

- a.** Upon receipt of the DGS-prepared Small Design Business Work Order, forwards Work Order to the Small Design Business for signature.
- b.** Upon receipt of the signed Work Order, creates the SAP/R3 Purchase Order, Type CPA4, Work Order/Delegated Project indicating the appropriate contract number in the text field of the Purchase Order and forwards to the Comptroller with the following documents attached:
  - i.** Small Design Business Work Order signed by the Small Design Business; and
  - ii.** CRP clearance certificate
- c.** Amendments to the existing Work Order must be created as additional lines on the original SAP Purchase Order.
- d.** DGS will not receive any funding for design or construction contracts under this scenario as long as the project remains valued less than \$299,999 and is administered by the Agency.

## **3. Comptroller**

- a.** Reviews the SAP/R3 Purchase Order which should include a CRP clearance certificate and a signed Work Order that indicates the:
  - i.** DGS Project Number of the Small Business Construction Program project needing design services; and
  - ii.** Agency who will be performing construction administration; and
  - iii.** Facility/institution where work will be performed; and
  - iv.** Small Design Business who will perform the design services; and
  - v.** Fee for the design services as a total dollar value; and
  - vi.** Percent payable to the Small Business for change orders; and
  - vii.** Lump Sum payable to the Small Business for site visits; and
  - viii.** A maximum of a 90-day design duration commencing upon the execution of the Work Order
- b.** Approves the SAP Purchase Order

**4. DGS or Agency (whoever issued the Small Design Business Work Order)**

- a. Coordinates with the Small Design Firm to ensure that project design proceeds in accordance with the DGS Small Business Project Design Manual.
  - i. If Agency issued the Small Design Business Work Order, Agency submits final design to DGS when complete.

**5. DGS**

- a. Receives the final design package from Small Design Business for a determination on compliance with Small Business Design Project Manual and readiness for bid.
- b. If the total sum of the Cost Estimate (consisting of all design costs, including permits, construction costs and contingency) in the final design package indicates the project remains reasonably within the originally designated threshold, prepares the project for bidding.
- c. If the total sum of the Cost Estimate (consisting of all design costs, including permits, construction costs and contingency) in the final design package indicates the project exceeds \$300,000, DGS will reject the design and will not proceed to bid the project.
  - i. Small Design Business must re-design the project until the estimated construction cost is within the base construction allocation and the Cost Estimate (consisting of all design costs, including permits, construction costs and contingency) is less than \$300,000.

**6. Agency**

- a. If necessary, prepares and submits an Amended Work Request for additional funding for all project costs.
- b. Forwards Amended Work Request to Comptroller for certification of funding.

**7. Comptroller**

- c. Certifies funding for the Amended Work Request

**J. Bidding Process for Small Business Construction Program Projects**

**1. DGS**

- a. Determines that design documents are acceptable.

**2. Agency**

- a. When the Agency will be administering construction, provides certification to DGS that funds are available, including 10% contingency.

### 3. DGS

- a. When DGS will be administering construction, DGS will ensure adequate funding for design, construction and contingency. Agencies will provide funding on an Agency Work Request, indicating the Fund Reservation established for the project. Fund Reservation document type GS, number series 48\*, prepared in SAP/R3 under transaction FMX1 is required.
- b. Upon verification of Agency funding, prepares the Notice to Bidders, Instructions to Bidders, including project duration, bid opening date and time, the appropriate wage rates, bonding requirements and liquidated damages. Bids for federally-funded projects will be released using federal contract language unless instructed otherwise by the agency.
- c. Issues the Notice to Bidders for the project to the self-certified Small Construction Businesses within the discipline(s) for the scope of work. Notice will be issued through electronic publication on the eMarketplace website and linked to the DGS Public Works portal.
- d. Publicly opens sealed bids at the time and location set forth in the Notice to Bidders.
- e. If DGS does not receive any bids on bid day,
  - i. After consultation with the Agency, may elect to either:
    - 1. Cancel the project; or
    - 2. Rebid the project; or
    - 3. Prepare an Exemption Memo which explains the circumstances that exempts the project from the Small Business program.
      - A. Within five (5) days of the decision to exempt, send a copy of every Exemption Memo to:
        - 1. DGS' Director of the Bureau of Small Business Opportunities.
- f. Receives and reviews bids to determine the lowest responsive bidder.
  - i. Creates a Bid Tab.
  - ii. Ensure that for any **Small Business** Construction Program project, the lowest responsive bid(s) does not exceed the

\$300,000 threshold. If they do exceed, DGS in consultation with the Agency must decide whether to:

1. Cancel the project; or
  2. Re-bid the project; or
  3. Revise and re-bid the project.
- g. If the lowest responsive bid(s) exceeds the current allocation but is below the \$300,000 threshold, then DGS:
- i. Notifies agency of any additional amount needed to fund the project, if necessary.
  - h. Prepares the bid tab showing the names, addresses and bid prices submitted. The bid tab will be available through the DGS Public Works portal.

**4. Agency**

- a. Within seven (7) calendar days of receipt of the notification of additional funding needed, provides DGS with either:
  - i. An Amended Work Request to include the additional project funding and contingency needed, including comptroller's certification of the availability of additional funds via Fund Reservation document type GS, number series 48\* ; or
  - ii. Written notification that the project is cancelled, via an Amended Work Request.

**5. DGS**

- a. If the Agency elects to cancel the project, submits an Amended Agency Work Request notifying DGS to cancel the project and refund any monies provided.
- b. Under no circumstances are funds to be liquidated without DGS approval through the issuance of a Confirmation Report.

**K. Contract Award and Construction Administration For Small Business Construction Program Contracts Administered by Agency**

**1. DGS**

- a. Prepares the contract(s) for award to the lowest, responsible bidder(s) and forwards to the Agency for execution.

**2. Agency**

- a. Upon receipt of the contracts to be executed, creates the SAP/R3 Purchase Order, Type CPA2, Agency Managed Design/Construction,

indicating the appropriate contract number in the text field of the Purchase Order and forwards to the Agency Head for approval with the following documents attached:

- i. awarded contract(s);
- ii. bid tab; and
- iii. Contractor Responsibility Program clearance certificate

### 3. Comptroller

- a. Verifies information provided and releases the Purchase Order.

### 4. Agency

- a. Agency Office of Chief Counsel reviews and approves Purchase Order in SAP.
- b. Administers the work performed under the contract pursuant to the terms of the Contract Documents including the Notice to Bidders, the General Conditions and Administrative Procedures.
- c. Carefully reviews any change orders to ensure it will not increase the project contract amount beyond \$300,000.
  - i. **Comptroller should not approve any change order to an Agency Managed Small Business Construction Program project that would allow the total construction cost of the project to exceed \$300,000.**
  - ii. Change orders must be encumbered under the Original SAP/R3 Purchase Order as additional line items to provide total contract costs.
- d. As work listed on invoices is constructed, installed or completed, approves invoice for payment and forwards to the Comptroller for payment.
- e. If applicable, provides a copy of all Notices of Default or Termination issued to contractors in accordance with General Conditions of the Construction Contract to DGS' Bureau of Small Business Opportunities.
- f. Within fourteen (14) days of the final payment of the project, sends DGS a copy of the final inspection report so that DGS can properly close the project in its project management system.

## L. Contract Award and Construction Administration For Small Business Construction Program Contracts Administered by DGS

### 1. DGS

- a. Prepares the contract(s) for award to the lowest, responsible bidder(s).
- b. Creates the Purchase Order in SAP/R3 with the following attachments:
  - i. awarded contract(s);
  - ii. bid tab; and
  - iii. Contractor Responsibility Program clearance certificate

## **2. Comptroller**

- a. Verifies information provided and releases the Purchase Order.

## **3. DGS**

- a. Upon final release of the Purchase Order, executes the contract(s) with the lowest responsible bidder(s).
- b. Administers the work performed under the contract pursuant to the terms of the Contract Documents including the Notice to Bidders, the General Conditions and Administrative Procedures.
- c. Carefully reviews any change orders to ensure it will not increase the project contract amount beyond the \$300,000 threshold.
  - i. A project with awarded contract(s) for less than \$300,000 may have change orders that increase the price, but DGS will carefully review and reserves the right to disapprove any change order work that would increase the project contract amount beyond the \$300,000 threshold.
- d. As work listed on invoices is constructed, installed or completed, approves invoice for payment and forwards to the Comptroller for payment.
- e. If, during the course of construction, the project runs out of funds, notifies the Agency of the additional funds needed to fund change orders or to pay claims. Invoices the Agency for the additional funds.

## **4. Agency**

- a. Returns the signed Amended Work Request to DGS, including the Comptroller's certification of the additional funds committed via Fund Reservation document type GS, number series 48\*. Through an interagency transfer, initiates payment of the invoice within seven (7) calendar days of its receipt.

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### **References:**

- 1. [Agency Work Request, Restricted Receipt Account](#)
- 2. [Federally Related Agency Project Work Request](#)

(The documents referenced below can be accessed on the [Public Works Small Business Design and Construction](#) web page)

- 3.** Agency Survey Cost Estimate
- 4.** Small Design Business Project Procedure Manual
- 5.** Instructions for Small Business Construction Program Bidders
- 6.** Bid Package
- 7.** Small Business Construction Program Standard Form of Contract, Contract Bond, and Performance Security
- 8.** Small Business General Conditions of Contract
- 9.** Small Business Administrative Procedures
- 10.** Agency Exemption Memo
- 11.** Final Inspection Report