

**GUIDELINES
FOR
SMALL BUSINESS
CONSTRUCTION CONTRACTS**



pennsylvania
DEPARTMENT OF GENERAL SERVICES

HARRISBURG, PENNSYLVANIA

MAY 2014 EDITION

**Guidelines for the
DGS Small Business Reserve Program
For Construction Contracts**

§1 General

- a.) Pursuant to Executive Order 2011-09, the purpose of the Department of General Services' (DGS) small business programs for construction contracts is to provide self-certified Small Construction Businesses with opportunities to compete for Commonwealth agency construction contracts solely against other DGS self-certified Small Construction Businesses to foster opportunities for growth and advancement among these businesses.
- b.) All Commonwealth agencies under the Governor's jurisdiction are required to identify and set aside contracts for DGS' small business programs for construction. Agencies awarding contracts under §301(c) of the Commonwealth Procurement Code shall, pursuant to the Governor's Executive Order 2011-09, set aside projects for award through small business programs created and coordinated with DGS. Independent agencies are encouraged to participate in the small business programs.
- c.) Under these programs, a business in the construction industry that completes the self-certification process will be deemed a Small Construction Business. Only Small Construction Businesses will be eligible to bid on prime contracts issued within these Programs.
- d.) Self-certification and participation in DGS' small business programs is race and gender neutral. The DGS small business website may contain optional links to assist small businesses interested in pursuing verification as a Small Diverse Business, but self-certification in the small business program is a separate and distinct process from DGS' verification process for minority-, woman-, veteran- or service-disabled veteran-owned businesses.
- e.) DGS reserves the right to modify these guidelines as necessary. The amended guidelines will be posted on the DGS website and will clearly indicate a revision date.

§2 **Definitions** – For purposes of this program, the following definitions shall apply.

- a.) **Calendar year** – time period spanning 365 days, unless leap year, which would span 366 days.
- b.) **Commonwealth employee** – an individual drawing a salary or wages from a Commonwealth agency for which the Commonwealth agency is required by law to file a W-2 form with the Internal Revenue Service.
- c.) **Contract** – a type of written agreement, regardless of what it may be called, for the procurement of construction services executed by all parties in accordance with the Act of October 15, 1980 (P.L. 950, No. 164) as amended, known as the Commonwealth Attorneys Act.
- d.) **For Profit Business** - entity that is formed and operated with the intention of earning a profit.
- e.) **Funding Agency** – the Commonwealth agency that is funding, and may be delegated authority for awarding and inspecting.
- f.) **Gross Sales Income** – the total value of sales per calendar year before discounting customer discounts, returns or allowances, or taxes and deductions.
- g.) **Performance Evaluation database** – An internal database used by DGS personnel to evaluate the performance of design professionals and contractors throughout the course of each project.
- h.) **Project** – The entire scope of work to be performed by all prime contractors through a coordinated effort within the same time period and at the same facility.
- i.) **Responsible Bidder** – A bidder that has submitted a responsive bid and possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.
- j.) **Responsive Bid** – A bid which conforms in all material respects to the requirements and criteria in the invitation for bids.
- k.) **Small Business** - shall:
 - 1. be a for-profit business; and
 - 2. be independently owned and operated; and
 - 3. not be dominant in its field of operation; and
 - 4. employ one hundred (100) or fewer full-time equivalent employees; and

5. not be a subsidiary of any other business; and
6. for a corporation, have a certificate of authority to do business in Pennsylvania as required by the Business Corporation Law, approved May 5, 1933, P.L. 364, as amended, or for an individual or partnership trading under a fictitious or assumed name must be registered under the Fictitious Name of Pennsylvania, the Act of May 24, 1945, P.L. 967, as amended; and
7. not exceed the three-year average maximum amount of gross sales income per calendar year described below; and
8. have properly licensed personnel as required by applicable law to perform the scope of work set forth in the contract.

Any business capable of proving all eight (8) elements may proceed to the self-certification process and, if successful, participate in the small business program.

- 1.) **Vendor Number** – a six digit number assigned by the Commonwealth to all businesses registered to conduct business with the Commonwealth.

§3 Scope of Work for Small Construction Business Program and Exclusions

- a) An Agency funded project with an estimated total project value between \$10,001 and less than \$300,000 is subject to this program. These projects are reserved to be bid, awarded and performed only by properly self-certified Small Construction Businesses. The exclusions are as follows:
 1. If DGS determines that there are no Small Construction Businesses available to bid the project or all bidders are non-responsive, then DGS reserves the right to exempt that particular project from these programs.
 2. An Agency funded project with an estimated total project value equal to or greater than \$300,000 is not encompassed within the scope of this program.
 3. A project with an estimated total construction contract award value for the entire scope of work less than or equal to \$10,000 is not encompassed within the scope of this program.
 4. A project with 100% of the labor to be performed by Commonwealth employees is not subject to this program.

5. Contracts, regardless of dollar value, for emergency work, sole source procurements, leasehold improvements, historic preservation work, or as otherwise approved for exemption by the Secretary of DGS, are not encompassed within the scope of this program.
- b) The contracts for design professional services to be performed for projects within this program have separate Guidelines.

§4 The Small Business Construction Program

a) Qualifications/Limits

1. Gross Sales Income: Between \$0 and \$20,000,000 in total gross sales income averaged over the last three calendar years.
2. Small Construction Businesses within the Small Business Construction program will compete for contracts with a Project estimated award amount between \$10,001 and less than \$300,000

b) Performance and Restrictions

1. Small Construction Businesses within the Small Business Construction Program are eligible to bid on each project available.
2. DGS will determine, based upon project scope and location, whether DGS will administer construction. The decision will be made prior to releasing the project for bids.
3. Small Construction Businesses within the Small Business Construction Program must self-perform at least 51% of the labor cost of every contract it is awarded under this program, unless the Department directs otherwise.
 - i. 49% of the project work may be subcontracted, and Small Construction Business primes are strongly encouraged to utilize other Small Construction Businesses as subcontractors and suppliers.
4. Small Construction Businesses within the Small Business Construction program may:
 - i. be self-certified for more than one discipline; and
 - ii. bid on more than one contract on any project; and

- iii. be awarded and perform multiple concurrent Small Construction Business contracts; and.
 - iv. bid on capital projects with an estimated value in excess of \$300,000.
- 5. DGS reserves the right to declare a Small Construction Business a non-responsible bidder if DGS determines that performance on one or more of its current contracts is unsatisfactory.
- 6. Bonds:
 - 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 Bond 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.
- 7. Insurance requirements are set forth in the General Conditions of the Contract. At a minimum, the Small Business must have General Liability insurance and Workers' Compensation insurance in amounts adequate to perform the Work in compliance with applicable law.

§6 Enforcement and Verification of Eligibility

- a.) **Every Small Construction Business that is awarded a construction contract will be subject to examination by the Commonwealth** to verify the accuracy of the statements made during the self-certification process or during the bidding process, and to verify self-performance of at least 51% of the contract and a maximum subcontracting of 49% of the contract.
- b.) Before a contract can be issued for signature, the Small Construction Business must pass a Contractor Responsibility Program review.
- c.) All Small Construction Businesses who are awarded a contract will automatically be entered into the DGS Performance Evaluation database.

- d.) Any individual or firm submitting a self-certification or a bid on a commonwealth contract reserved for small businesses agrees to cooperate fully with any commonwealth agency in verifying the accuracy and current status of the business' status.
- e.) Any business determined by the Commonwealth to have provided false information in connection with obtaining or attempting to obtain either certification or a contract under this DGS SB Construction Program shall repay all reasonable expenses incurred by the Commonwealth during the investigation of the business.
- f.) Subject to the provisions of 18 Pa.C.S. § 4904 Unsworn Falsifications to Authorities, anyone providing false information to the Commonwealth of Pennsylvania in connection with obtaining or attempting to obtain either certification or a contract under the Small Business Reserve program will be subject to the following:
 - 1. A determination by the Contracting Officer that the business and/or person is not responsible;
 - 2. A determination that a contract entered into is void or voidable under §1711.2 of the Commonwealth Procurement Code;
 - 3. Reimbursement of any costs incurred by the Commonwealth in investigating potential violations relating to the validity of information submitted during the self-certification process;
 - 4. Suspension and/or debarment under §531 of the Commonwealth Procurement Code;
 - 5. Criminal prosecution for procurement fraud, perjury, or other applicable crimes; and
 - 6. All other actions permitted by law deemed necessary to protect the Commonwealth's interest and ensure compliance with the laws of the Commonwealth.

§7 Scope of Work and Procurement Requirements

- a.) DGS will bid all Small Business Construction Program projects.

b.) Award to the Lowest Responsible Bidder – Each prime contract will be advertised and awarded in accordance with the provisions of §512 of the Commonwealth Procurement Code.

1. Any potential bidder who has not completed the self-certification process and obtained a self-certification certificate as of the bid opening date will not be eligible to bid on projects encompassed by this Program.
2. Any person or company bidding on a Small Business Construction procurement that has not completed the self-certification process and obtained a self-certification certificate as of the bid opening date/time will have its bid rejected for that project on the ground that the bidder is not responsive.

c.) Separations Act – In accordance with Section 322(6) of the Commonwealth Procurement Code, construction projects where the total 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.

1. On Small Business Construction program projects, the design professional or the funding agency will define the scope of work for each prime contract and ensure that the work is properly separated when providing project bid packages to DGS.

d.) Prevailing Wage Act and Davis Bacon Act –

1. To the extent a Small Business Construction program project has federal funds involved, the Davis-Bacon Act may apply. The Davis-Bacon Act may apply 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.
2. On Small Business Construction program projects, DGS will obtain and include Prevailing Wages or Davis-Bacon Wages in bid proposals for any project with an estimated value equal to or greater than the threshold amount required by law. Any Small Construction Business awarded a

Small Business Construction Program contract under the Small Business Construction program shall comply with the Prevailing Wage Act or Davis-Bacon Act as applicable.

e.) Public Works Employment Verification Act – The Notice to Bidders for contracts under the Small Business Construction program will state whether the contract is subject to the provisions, duties, obligations, remedies and penalties of the Public Works Employment Verification Act, 43 P.S. §§167.1-167.11. According to the Public Works Employment Verification Act, Contractors are required to utilize the Federal E-Verify program to verify the employment eligibility of each new employee hired after January 1, 2013 and to submit to DGS or the Funding Agency a Commonwealth Public Works Employment Verification Form available on the DGS web site at www.dgs.state.pa.gov prior to being awarded a contract.

f.) Prompt Payment Schedule – In accordance with §3931 of the Commonwealth Procurement Code, performance of work in accordance with the terms of the construction contract entitles a prime contractor to timely payment by DGS or the Funding Agency. In addition, performance by a subcontractor in accordance with the terms of the contract entitles the subcontractor to payment from the contractor. The performance of contracts and subcontracts under these programs is subject to the full requirements of the Prompt Payment Schedule requirements.

§8 Commonwealth Training Opportunities for Small Construction Businesses

a.) Quarterly Work Sessions – DGS will conduct work sessions to review DGS procedures for construction. These sessions are free and open to all Small Construction Businesses who have obtained self-certification as a Small Construction Business. DGS personnel and/or other facilitators will discuss any changes to the Small Business Construction Program policies and procedures and issues such as Separations Act compliance, DGS Administrative Procedures, Critical Path Method construction scheduling, change orders, billing procedures and construction administration. Each

Small Construction Business is strongly encouraged to attend these work sessions as they become available. DGS will facilitate registration for these sessions.

b.) Special Informational Sessions – DGS will endeavor to conduct special sessions to present new technology or other topics of interest. These optional sessions may have limited space availability and will be open on a first come first serve basis. Topics may include Building Information Modeling, sustainable design, cost estimating, video meeting software, business development planning, and other areas of interest. Small Construction Businesses are encouraged to contact DGS to suggest topics of interest. DGS will facilitate registration for these sessions.

§9 Termination from the Program

- a.)** The Department may terminate a Small Construction Business' eligibility to participate in the Program by revoking the business' self-certification as a Small Construction Business if:
- 1.** a final determination by an authority having jurisdiction that the Small Construction Business violated any one or more of the requirements set forth in these Guidelines describing Enforcement and Verification of Eligibility.
 - 2.** a written notice of default and/or notice of termination issued by DGS pursuant to the terms of the General Conditions of the Small Construction Business contract.
 - 3.** a Commonwealth agency suspends or debars the Small Construction Business.

§10 Monitoring and Reporting System to Measure Effectiveness of Program

- a.)** Pursuant to Paragraph 2(e) of the Governor's Executive Order 2011-09, DGS will implement performance measures to evaluate the success of the program.