

**GUIDELINES
FOR
SMALL BUSINESS
DESIGN CONTRACTS**



pennsylvania
DEPARTMENT OF GENERAL SERVICES

HARRISBURG, PENNSYLVANIA

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§1 General

- a.)** Pursuant to Executive Order 2011-09, the purpose of the Department of General Services' (DGS) Small Business Procurement Initiative for Design Contracts ("the Small Business Design Program") is to provide DGS-certified small design businesses with opportunities to compete for commonwealth agency contracts for design services solely against other small businesses to foster opportunities for growth and advancement among these small businesses. The program will train firms to be prepared to perform work, learn about new design procedures and advance their business plans. The program fosters competitive procurement but does not guarantee every properly certified small design business work.
- b.)** All commonwealth agencies under the governor's jurisdiction are required to identify and set aside projects for the Small Business Design Program. 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 to a Small Business program created and coordinated with the Department of General Services. Independent agencies are encouraged to participate in the Small Business Design Program.
- c.)** Under this program, a design firm that satisfactorily completes the self-certification process will be deemed a "Small Design Business". Only Small Design Businesses will be eligible to perform the design services on projects designated for the Small Business program.
- d.)** Certification and participation in DGS' Small Business Program is race and gender neutral. The DGS small business website may contain optional links to assist a Small Business interested in pursuing other verifications, but self-certification in the Small Business Program is a separate and distinct process from DGS' verification process for small diverse 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 design 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.) **Gross Sales Income** – the total value of sales per calendar year before discounting customer discounts, returns or allowances.
- f.) **Invitation to Qualify** – All documents, including those either attached or incorporated by reference for qualifying small design businesses.
- 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 done by all prime contractors through a coordinated effort within the same time period and at the same facility.
- i.) **Small Business** - shall:
 - 1. be a for-profit business;
 - 2. be independently owned and operated; and
 - 3. not be dominant in its field; and
 - 4. employ one hundred (100) or fewer 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, namely the Act of May 24, 1945, P.L. 967, as amended; and

7. not exceed the three-year average maximum amount of gross sales per calendar year described in Section 4 as of the date of self-certification; and
8. have properly licensed personnel as required by applicable law to perform the scope of work set forth in the design contract.

Any business capable of proving all eight (8) elements may proceed to the self-certification process and, if successful will need to complete the Invitation to Qualify to be eligible for consideration to perform design services on a Small Business project. DGS will provide training regarding design process and procedures.

- j.) **Small Design Business** – a Small Business that has successfully completed the self-certification process and received a certificate from DGS indicating the date of certification and a Small Design Business number.
- k.) **Vendor Number** – a six digit number assigned by DGS to all businesses registered to conduct business with the Commonwealth.
- l.) **Work Order** – a written authorization from DGS which provides, among other items, the scope of work, basic services, and design fee for the Small Design Business on a project.

§3 Scope of Work for the Small 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 and is reserved to be designed by a Small Design Business. The exclusions are as follows:
 1. If, according to the criteria in Section 8(c), DGS determines that there are no Small Design Businesses available to design the project, then DGS reserves the right to exempt that particular project from the Small Business program.
 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 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 design 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 approved by the Secretary of the Department of General Services, are not encompassed within the scope of this Program.
- b.) The construction contracts to be awarded as a result of the design services performed under this Program are addressed separately in the DGS Small Business Construction Program.

§4 Small Design Business – A Small Design Business shall be certified as described in the Self-Certification Section and will compete with only other Small Design Businesses. If a business exceeds the Gross Sales Income as of the date of submitting the self-certification or otherwise fails to qualify during the self-certification process, then that business will not be eligible to receive a design contract or Work Orders in this Program.

- a.) Gross Sales Income: Less than \$7,000,000 average in gross sales income per year for each of the last 3 calendar years.
1. The Department will re-evaluate the Gross Sales Income limit annually and may change the amount for the following year based upon the actual data of the sales limits submitted by the Qualified Small Design Businesses. Any business previously certified will not be governed by any amendment to Gross Sales Income limits for the duration of their self-certification.
 2. A Small Design Business may only subcontract work on a Small Business project to a properly self-certified Qualified Small Design Business unless otherwise authorized by the Department of General Services.

§5 Self-Certification to Become a Small Design Business

- a.) **Vendor Number** – Before going to the self-certification step, a Small Business must have a Vendor Number, which is assigned to all businesses who do business with the Commonwealth. This number is separate from a Small Business number.
 1. Process – to obtain a Vendor Number, go to www.dgs.pa.state and click on the tab on the left side labeled “Doing Business with the Commonwealth”, then click upon “Procurement” and follow instructions in the Supplier Service Center for New Procurement Supplier Registration.
- b.) **Process** - The process for certification is set forth at the link on the DGS Small Business Program www.smallbusiness.pa.gov. The link will provide a step-by-step questionnaire to be completed by a duly authorized person representing the business.
 1. During the self-certification process, a Small Design Business must recognize and answer questions based upon the understanding that a Small Design Business must self-perform at least 51% of the total fee on every Work Order issued under this program, unless there is specialized language otherwise permitted in the Work Order.
- c.) At the successful completion of the questionnaire, the business will be self-certified within one or more of the following categories of services:
 1. Architecture
 2. Engineering
 3. Elevator design
 4. Hazardous Material assessment and/or remediation
- d.) **Certification** - If successful with self-certification, the Small Design Business should print out the certification, which will contain a Small Design Business identification number which shall be used by the Small Design Business for submitting a qualification form to the Selection Committee and on all contracts and work orders. DGS will create and maintain a list of self-certified Small Design Businesses on the DGS Small Business website.

- e.) **Training** – DGS will provide training regarding DGS’ design processes and procedures.
- f.) **Invitation To Qualify** – DGS has issued a standardized Invitation to Qualify (ITQ) to all self-certified Small Design Businesses. The ITQ elaborates on the specific qualifications and services that the firm has to perform subject to this Small Design Business Program. The ITQ information provided by the Small Design Business will be submitted to DGS for review. Once approved, DGS will issue a Small Design Business Contract to the Small Design Business.
- g.) **Small Design Business Contract** – DGS will issue a standardized contract to each properly certified Small Design Business approved through the ITQ process for signatures. The contract will be for Zero (\$0) Dollars and not encompass any particular project. This contract will serve as the basis for issuing work orders to the Small Design Business if that firm is selected to perform work on a particular Small Business project.
 - 1. **Fee** – The fee for professional services by a Small Design Business will be set by DGS prior to issuing an advertisement or a Work Order. The fee will be based upon a percentage of the estimated project costs as set forth in the Notice. DGS will not negotiate any design fees for Small Business projects.
- h.) **Time Period Certification is Valid** - The Self-Certification shall be valid for a period of one (1) calendar year from the day the Small Design Business self-certification is issued by DGS.
- i.) **Fluctuation of Data within the one-year period** - The Small Design Business’ gross sales may fluctuate within that one (1) year certification period, so long as the figure was accurate at the time of the self-certification was completed.
- j.) **Re-certification** – The Small Design Business assumes responsibility for re-certifying before the lapse of the one-year period. If the certification lapses, the Small Design Business will not be eligible to be considered for any Small Business project.

§6 Selection to Perform Design Services

a.) Only Small Design Businesses that have:

1. A valid vendor number; and
2. Been issued a self-certification certificate which is valid; and
3. Been approved under an ITQ; and
4. Signed a Small Design Business Contract

are eligible to perform design services on a Small Business project. The process for selection differs, depending upon the project budget.

b.) Small Business Projects with a Design Fee less than the Small Procurement Threshold.

1. The Small Procurement Threshold, as of January 1, 2014, is \$17,096 and will be adjusted annually. The adjustment will be effective every year on January 1st.
2. Pursuant to § 905 and § 514 of the Commonwealth Procurement Code, projects in this category will not be submitted to the DGS Professional Selections Committee. DGS will select the design firm from the list of properly certified Small Business Design firms who signed a Small Business Design Contract using the criteria set forth in Section 8 of these Guidelines.
3. The successful firm will be issued a work order setting forth:
 - 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; 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 on-site visits.

c.) Small Business Projects with Design Fee exceeding the Small Procurement Threshold.

1. The Small Procurement Threshold, as of January 1, 2014, is \$17,096 and will be adjusted annually. The adjustment will be effective every year on January 1st.
2. Projects in this Design Fee category will be submitted to the DGS Professional Selections Committee.
 - i. Any business submitting qualifications on a Small Design Business project that is not self-certified as a Small Design Business prior to the date/time the submission is due will have its submission rejected without any further review by the Committee.
3. The DGS Selections Committee meets on a regular basis and will review Small Design Business' Letter of Interest for designated projects in a timely manner. The Small Design Business shall not initiate any contact with the Selections Committee. The Committee's decision on the business' qualifications is based upon the information set forth in the Small Design Business' ITQ Qualification Submission Form and any Letter of Interest.
4. A Small Design Business that is short-listed by the Selections Committee becomes eligible for consideration by DGS on that particular project.
5. Selection of the successful short-listed firm will be based upon factors set forth in §905 of the Commonwealth Procurement Code, as discussed at length in Section 8 of these Guidelines.
6. The successful firm will be issued a work order setting forth:
 - 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; and

- v. the design schedule, which shows completion of the design within 90 days from issuance of the Work Order; and
- vi. the number of required on-site job conferences; and
- vii. lump sum payable for additional on-site visits.

§7 Enforcement and Verification of Eligibility

- a.) **Every Small Design Business that receives a work order will be subject to examination by the Commonwealth** to verify the accuracy of the statements made during the self-certification process, the qualification submission process; verify self-performance of at least 51% of the total fee and subcontracting only to other DGS Qualified Small Design Businesses, unless otherwise approved by the Secretary of the Department of General Services.
- b.) Before a work order can be issued, the Small Design Business must pass a Contractor Responsibility Program review. All Small Design Businesses who receives a work order will automatically be entered into the DGS Performance Evaluation database.
- c.) DGS retains the right to investigate at any time and for any reason the accuracy of any and all statements or assertions made by any business or individual in obtaining either self-certification as a small business, in submitting a qualification form or in performing services on a commonwealth contract reserved for small businesses.
- d.) Every individual or business submitting for self-certification, submitting a qualification form or performing a work order under a commonwealth contract 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, qualification approval by the Selections Committee or a contract under this 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, qualification, a contract or a work order under this 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.

§8 Small Design Business Contract

- a.) A Small Design Business that is selected to be the design professional by the Department will be issued a work order. The design fee for the project will be set at the time the project is advertised and will not be negotiated by the Department.
- b.) A Small Design Business may be selected to perform work on more than one project at any given time. The number of work orders awarded, completed and/or being performed, however, will be considered by the Department in determining which Small Design Business will be selected for any given project.

- c.) The Department will utilize the following criteria, listed in no particular order, when considering which Small Design Business to select for every project:
1. An equitable distribution of work orders to Small Design Businesses; and
 2. Particular capability to perform the design for the project being considered; and
 3. Geographic proximity of the Small Design Business to the project location; and
 4. The necessary available personnel to perform the services required by the project; and
 5. Any other relevant circumstances peculiar to the proposed project.

§9 **Withdrawal or Termination from the Program**

- a.) A Small Design Business may withdraw from the Program at any time for any reason but may re-enter at any time with proper self-certification.
1. Self-certification will be based upon the Gross Sales Income limits in effect at the time of re-certification.
- b.) The date of withdrawal shall be the date DGS receives **written notice** from the Small Design Business of their intent to withdraw and will be inactive in the Small Business database.
- c.) As of the date of withdrawal,
1. the business will not be eligible to receive a work order on any Small Business projects; and
 2. the business will not receive any further notices on Small Business projects; and
- d.) The Department may terminate a Small Design Business' eligibility to participate in the Program by revoking the business' Small Design Business identification number for one or more of the following reasons:
1. a final determination by an authority having jurisdiction that the Small Design Business violated any one or more of the requirements set forth

in the Section of 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 Design Business contract.

§10 Commonwealth Training Opportunities for Small Design Businesses

a.) **Quarterly Work Sessions** – DGS will conduct work sessions to review DGS procedures for design professionals. These sessions are free and open to all Small Design Businesses. The sessions will be held in Harrisburg and may last for 3 to 4 hours. DGS personnel will discuss design issues such as Separations Act compliance, requirements for the DGS Project Procedure manual, change orders, billing procedures and design administration by the design business. Each Small Design Business should send at least 1 employee to one of these work 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, Critical Path Method construction scheduling, sustainable design, cost estimating, video meeting software, business development planning, and other areas of interest. Small Design Businesses are encouraged to contact DGS to suggest topics of interest.

§11 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.