

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance items, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.8.2.1 and (2) changes in Design-Builder's costs under Section 5.8.2.2.

**§ 5.8.3** The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

## **§ 5.9 Subcontracts and Other Agreements**

**§ 5.9.1** Those portions of the Construction Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed under subcontracts or other appropriate agreements with the Design-Builder. The Owner may designate specific persons from whom, or entities from which, the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from subcontractors, and from suppliers of materials or equipment fabricated especially for the Construction Work, who are qualified to perform that portion of the Construction Work in accordance with the requirements of the Design-Build Documents. The Design-Builder shall deliver such bids to the Owner with an indication as to which bids the Design-Builder intends to accept. The Owner then has the right to review the Design-Builder's list of proposed subcontractors and suppliers and, subject to Section 5.9.1.1, to object to any subcontractor or supplier. Any approval or objection by the Owner shall not relieve the Design-Builder of its responsibility to perform the Construction Work in accordance with the Design-Build Documents. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

**§ 5.9.1.1** When a specific subcontractor or supplier (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Construction Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Contract Sum by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 5.9.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Design-Builder shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Design-Builder in Article 9.

## **§ 5.10 Use of Site**

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

## **§ 5.11 Cutting and Patching**

The Design-Builder shall not cut, patch, or otherwise alter fully or partially completed construction by the Owner or a Separate Contractor except with written consent of the Owner and Separate Contractor. Consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold, from the Owner or Separate Contractor, its consent to cutting or otherwise altering the Construction Work.

## **§ 5.12 Cleaning Up**

**§ 5.12.1** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Construction Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 5.12.2** If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Design-Builder.

## **§ 5.13 Access to Construction Work**

The Design-Builder shall provide the Owner and its Separate Contractors and consultants with access to the Construction