

## CHAPTER 3

### PROJECT PLANNING

#### 3.1 RELATED STATUTORY AUTHORITY

- 3.1.1 SC Code § 11-35-1510 provides methods of source selection for awarding state contracts.
- 3.1.2 SC Code § 11-35-1530 provides conditions for use and process for using competitive sealed proposals
- 3.1.3 SC Code § 11-35-3005 provides project delivery methods for the procurements relating to infrastructure facilities.
- 3.1.4 SC Code § 11-35-3015 assigns source selection methods to project delivery methods.
- 3.1.5 SC Code § 11-35-3023 allows the pre-qualification of bidders on state construction with the approval and supervision of the State Engineer's Office.
- 3.1.6 SC Code § 11-35-3024 provides additional procedures applicable to procurement of certain project delivery methods.
- 3.1.7 SC Code § 11-35-3030 provides detailed information on bond and security required for state construction.
- 3.1.8 SC Code § 11-35-3037 provides other forms of security an Agency may use on a construction project.
- 3.1.9 SC Code § 29-6-250 requires labor and material payment bonds be provided to the Agency for contracts in excess of fifty thousand dollars. The bond must be secured by cash or must be issued by a surety company licensed in the State with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability". If the contract is for less than one hundred thousand dollars, the governmental body may permit the use of a "B+" rated bond if it justifies that use in writing.

#### 3.2 STRATEGIC PLANNING

Infrastructure construction projects should be the culmination of systematic planning starting with a multi-year (typically five years) Comprehensive Permanent Improvement Plan (CPIP). This CPIP should fit into the Agency's strategic plan and the strategic plan should support the need for each facility improvement on the capital projects plan. Thus, project planning should start with the Agency's strategic planning and development of a CPIP.

#### 3.3 DEFINING / PROGRAMMING THE PROJECT

- 3.3.1 Once a project is conceived, it must be defined. A project is defined by answering a series of questions:
  - A. Why is the project being undertaken?
  - B. What will the function of the facility be?
  - C. What amenities and other features must be included in the facility?
  - D. What are the aspirations of the Agency for the project?
  - E. Where will the facility be located?
  - F. Are local governmental approvals such as zoning permits required?
  - G. Does the project impact or involve existing facilities?
  - H. When does the Agency need the facility and what is its likely cost?
  - I. How will the Agency finance the project?
- 3.3.2 The process of analyzing the Agency's needs and defining the project is commonly called Programming.
  - A. A well-conceived and defined program is critical to the start and completion of a successful project.
  - B. Some agencies have the capability to program certain projects using their employees, while others will almost always need to contract with a consultant to provide programming assistance.
  - C. While OSE guidance is available, each Agency will need to decide for itself whether programming assistance is needed for the project at hand.
- 3.3.3 If the Agency must acquire land to site the project, it will need to follow the procedures set forth in Chapter 10 - Real Property.

**3.4 SELECTING A PROJECT DELIVERY METHOD**

**3.4.1** Once the Agency has defined the scope, schedule, budget, and means of financing for its project, the agency is ready to select the project delivery method. The Procurement Code requires the Agency to make a written determination of the project delivery method that will be most advantageous for the State for the specific project at hand. The following are project delivery methods authorized by statute:

- A. Design-Bid-Build (D-B-B).
- B. Construction Management At-Risk (CM-R).
- C. Operations and Maintenance.
- D. Design-Build (D-B).
- E. Design-Build-Operate-Maintain (DBOM).
- F. Design-Build-Finance-Operate-Maintain (DBFOM); and
- G. Any other combination of design, construction, finance, and services for operation and maintenance the State Fiscal Accountability Authority (SFAA) or State Engineer may authorize.

**3.4.2 Project Delivery Options Translator**

- A. It is normal to find different parties with different understandings concerning what each of the terms used above means. For this reason, some jurisdictions have adopted a project delivery method translator, a version of which is published below. This translator does not include finance, operations, and maintenance additions to the design-build project delivery method.
- B. For the Procurement Code’s definition of each authorized selection method, see SC Code § 11-35-2910.

**PROJECT DELIVERY OPTIONS TRANSLATOR**

**Defining Characteristics of Each Option**

Design & Construction Services Combined in One Contract	No	No	Yes
Cost of Work a Selection Criteria	Yes	Yes	Yes
Total Construction Cost Sole Selection Criteria	Yes	No	No
	↓	↓	↓
Common Names Used	Design-Bid-Build - Competitive Sealed Bids	CM-R – Competitive Cost Proposal	Design-Build – Competitive Cost Proposal
	↓	↓	↓
Insert Your Own Name for Each Method			

**3.4.3 Agency Assessment of Project and Selection of Project Delivery Method**

- A. The Agency should make the assessment and selection of which project delivery method to use as soon as sufficient information is available to make an informed decision. This may be either before or after initial establishment of the Permanent Improvement Project (PIP) with the Joint Bond Review Committee (JBRC) and SFAA. Often this will be at the completion of programming.
- B. The Agency must select the method “which is most advantageous to the State and results in the most timely, economical, and successful completion, of the project”. In selecting the method, the Agency must carefully assess the requirements the project must satisfy and other characteristics that would be in the best interest of the State. The Agency assessment must consider and answer who, what, where, when, why, and how questions regarding factors related to the infrastructure facility and how these factors support one delivery method over another.

- C. The following specific factors are set forth in the Procurement Code:
1. Facility
    - a. What type of infrastructure facility or service is the Agency acquiring?
    - b. What is the size, scope, complexity, and technological difficulty of the infrastructure facility?
    - c. To what extent are design requirements for the infrastructure facility known, stable, and established in writing?
  2. Location of Facility
    - a. What are the attributes the site must have?
    - b. What sites are available?
    - c. Are there unique characteristics of available sites that would impact project?
  3. Time Deadlines
    - a. What is the earliest date on-site work can start?
    - b. What is the deadline for completion of the infrastructure facility?
    - c. Does the Agency have critical intermediate deadlines between start and completion of the project?
  4. Financing to support design, construction, operations, maintenance, repairs, and demolition over the facility life cycle including:
    - a. What are the projected life cycle costs?
    - b. What are the potential sources of funding for these costs?
    - c. What is the projected cash flow requirement?
  5. Available Project Delivery Methods
    - a. What are the comparative advantages and disadvantages of each method for the infrastructure facility?
    - b. How the Agency may appropriately configure and apply each method to fulfill the Agency's requirements for the infrastructure facility?
    - c. What project delivery methods has the Agency used on similar infrastructure facilities in the past and what were the results?
  6. Decision making and administrative services
    - a. Which State personnel are available to the Agency to make decisions and administer the project and what are their relevant experiences, skills, and abilities?
    - b. To what extent can the Agency appropriately assign decision-making and administration to designers, builders, CM-Rs, D-Bs, DBOMs, DBFOMs, peer reviewers, or operators?
    - c. To what extent can the Agency appropriately assign decision-making and administration to outside consultants, including Construction Managers Agent (CM-A)?
- D. The Procurement Code designates Design-Bid-Build as an appropriate project delivery method for any infrastructure facility project except Guaranteed Energy, Water, or Wastewater Savings contracts (GEWWS). Except in the case of GEWWS contracts, an Agency may choose Design-Bid-Build as the source selection method for a project without further project specific justification; however, a written determination must still be prepared and placed in the procurement file. The Agency's recommendation is automatically approved by the Office of State Engineer.
- E. A determination of project delivery method for guaranteed energy, water, or wastewater savings contracts is not necessary as the delivery method is dictated by the nature of guaranteed energy, water, or wastewater savings contracts (i.e., D-B or a permutation of D-B).

#### 3.4.4 Selecting a Source Selection Method

The source selection method is the method the Agency will use to procure design and construction services. The Procurement Code prescribes source selection methods for most project delivery methods. These methods are as follows:

- A. Design-Bid-Build (D-B-B)
1. Architect-engineer, construction management, and land surveying services procured using qualification-based selection procedures of SC Code § 11-35-3220.
  2. Construction services procured using competitive sealed bidding as provided in SC Code § 11-35-1520.

- B. Construction Management at Risk (CM-R)**
  - 1. Architect-engineer and land surveying services procured using qualification-based selection procedures of SC Code § 11-35-3220.
  - 2. CM-R procured using competitive sealed proposals as provided in SC Code § 11-35-1530 or competitive sealed bidding as provided in SC Code § 11-35-1520. (NOTE: While the Procurement Code does allow procurement of the CM-R using competitive sealed bidding, OSE finds it difficult to imagine the circumstances under which this would be advantageous to the State since bidding would require a complete or nearly complete design negating many of the benefits of this delivery method.)
- C. Operations and Maintenance** – Any source selection method allowed by SC Code § 11-35-1510.
- D. Design-Build (D-B)** – Competitive sealed proposals as provided in SC Code § 11-35-1530.
- E. Design-Build-Operate-Maintain (DBOM)** – Competitive sealed proposals as provided in SC Code § 11-35-1530.
- F. Design-Build-Finance-Operate-Maintain (DBFOM)** - Competitive sealed proposals as provided in SC Code § 11-35-1530.
- G. Any other combination of design, construction, finance, and services for operation and maintenance** SFAA or State Engineer may authorize pursuant to SC Code § 11-35-3005(2) - Any source selection method allowed by SC Code § 11-35-1510.

### 3.4.5 Written Determination of Appropriate Project Delivery Method

- A.** After selecting the most advantageous project delivery method, the Agency must prepare a written report (determination) signed by the Agency Head which sets forth the facts and considerations leading to the selection of the particular method. This determination must:
  - 1. Describe the selected project delivery method.
  - 2. Describe the source selection method (See Section 3.4.4).
  - 3. Describe any additional procurement procedures (See Section 3.5).
  - 4. Describe the types of performance security selected (See Section 3.6 and Chapter 2); and
  - 5. Set forth the facts and considerations leading to these selections:
    - a. Address factors discussed in Section 3.4.3 including why other delivery methods are either not practical or not advantageous to the State.
    - b. Set forth basis for selecting source selection method (if by statute, cite the statute).
    - c. Set forth basis for selecting additional procurement procedures; and
    - d. Set forth basis for selecting performance security (if by statute, cite the statute).
- B.** The written determination must meet the requirements set forth in Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003). The Agency will find the Sloan decision posted at [https://procurement.sc.gov/files/Sloan\\_v\\_Greenville\\_School\\_Dist\\_%5B98-CP-23-2816%5D.pdf](https://procurement.sc.gov/files/Sloan_v_Greenville_School_Dist_%5B98-CP-23-2816%5D.pdf). Under Sloan, the determination must fulfill two purposes:
  - 1. It must effectively inform the State Engineer and, by extension, SFAA, why the selected method of contract administration works to the Agency and the State’s best advantage for the project at issue, and
  - 2. It must provide the citizens of South Carolina a window into the Agency’s “decision-making process – safeguarding the quality and integrity of the contract awards through public accountability.” “If the written determination provides sufficient factual grounds and reasoning for the ... public to make an informed, objective review of these decisions, then it has accomplished its purpose.” Sloan.
- C.** The Agency must submit the signed written determination to the State Engineer along with a request to use the alternative method. The State Engineer has ten days to review and determine his position with respect to the proposed method. If the State Engineer disagrees with the Agency, the State Engineer shall provide written notification to SFAA and the Agency stating the reasons for contesting the selected method. SFAA shall make the final decision as to the approved method of construction contracting.

## 3.5 PREQUALIFICATION OF PRIME CONTRACTORS/SUBCONTRACTORS FOR DESIGN-BID-BUILD

### 3.5.1 Special Considerations for Prequalification

- A.** The Procurement Code provides that an Agency may limit participation in a solicitation for construction to only Prime Contractors/Subcontractors that have been prequalified as provided in SC Code § 11-35-3023.

- B. In accordance with the requirements of this Chapter, the Agency shall provide the State Engineer with a written determination that the use of Prequalification will be the most advantageous to the State for the specific project. Upon approval by the State Engineer, the Agency will choose personnel to serve as the Selection Committee to conduct the Prequalification process.
- C. The evaluation process for selecting the most qualified Contractors involves a significant amount of time by the Selection Committee members. As part of their determination, an Agency should consider the time required and the level of staffing needed to make the selection process successful.
- D. The number of Contractors to be prequalified is not protestable.
- E. The prequalification process must be cancelled if:
  - 1. At least two (2) Prime Contractors are not prequalified.
  - 2. At least two (2) Subcontractors are not prequalified per license classification or subclassification.
  - 3. No submittals are received in response to the Invitation; or
  - 4. The Selection Committee does not consider any of the Contractors/Subcontractors that submitted to be qualified to perform the work of the project.
- F. If the process is cancelled, the Agency must close out the procurement by doing the following:
  - 1. Submit a Request for Approval of Prequalified Contractors for Construction (SE-160) to OSE with “Prequalification Cancelled” shown as the Prequalified Contractors and indicate the reason under “Remarks”.
  - 2. After OSE approves the SE-160, post the SE-170, with “Prequalification Cancelled” shown as the Prequalified Contractors and indicate the reason under “Remarks”. Send a copy to all Contractors, if any, and to OSE the same day it is posted.

### 3.5.2 Prequalification Selection Committee

- A. To prequalify Contractors, the Agency must establish a Selection Committee (Committee). The Committee must be composed of those individuals the Agency determines to be qualified to make an informed decision as to the most qualified Contractors.
  - 1. The Committee shall consist of no less than 3 voting members and the OSE Project Manager as a non-voting Chairman (Chair).
  - 2. The voting members of the Committee shall be state employees or considered to be state employees. For the purpose of meeting this requirement, members of Agency Boards acting in their official capacity are considered state employees.
- B. Committee members are subject to the Ethics, Government Accountability and Campaign Reform Act of 1991. They should become familiar with the requirements of this act and avoid any conflict of interest.
  - 1. The Agency must have all Committee members sign a Prequalification Selection Committee Confidentiality & Conflict of Interest Policy (SE-114), as a means of advising them of their responsibilities.
  - 2. Moreover, the Agency must have anyone involved in the decision-making process, or who has access to the process, sign an SE-114. For example, if the Agency Head is not a member of the Committee but has final approval of the Committee’s decision, the Agency Head must sign an SE-114. The same is true for members of a Board of Trustees, administrative assistants, etc. that may assist in document preparation and handling.
  - 3. The Committee must comply with the Freedom of Information Act (FOIA); however, committee members must not disclose confidential information derived from the Contractor’s Statement of Qualifications & Questionnaires submitted by competing Contractors during the selection process. There is a summary of the requirements of this Act in Chapter 1.
- C. There are no requirements for members appointed to a Committee. The following could be possible Committee members:
  - 1. The Agency Head (Secretary, Executive director, President, or like officer) or their designee.
  - 2. One representative of the division, department, or program agency for which the project is being built.
  - 3. Agency Project Manager; and/or
  - 4. Agency Facilities Director or their designee.

### 3.5.3 Invitation for Construction Prequalification

- A. The Committee must prepare the Invitation for Construction Prequalification (SE-110) and include the following information:
  1. Project name and number.
  2. Project description, including licensing classification or subclassification required and the general scope, nature, and complexity of the services required.
  3. How interested Contractors can receive a Contractor's Statement of Qualification & Questionnaire and apply for consideration; and
  4. The submission deadline.
- B. Once the Agency is ready to advertise, it must submit the completed SE-110 to OSE in MS Word format for review and approval.
- C. Upon approval, OSE will submit the SE-110 to South Carolina Business Opportunities (SCBO) for advertisement. The Agency may advertise elsewhere but must advertise in SCBO.

### 3.5.4 Contractors' Licensing

- A. At the time of submittal for prequalification, a Contractor must be licensed as required by the SC Contractor's Licensing Board (SCLLR) for the license classification or subclassification of work covered by the solicitation and the license must allow the Contractor to perform the value of the work indicated in the Statement of Qualification Package.
- B. The Agency shall verify licensing with SCLLR. OSE will not comment on licensing issues.

### 3.5.5 Contractor's Statement of Qualification & Questionnaire

- A. The Agency must prepare the Contractor's Statement of Qualification & Questionnaire specific to the project.
- B. The Agency will complete the information requested on page 1, except what is indicated to be completed by the Contractor.
- C. The Contractor will be required to provide the information requested on the first page (as indicated) as well as Parts II, III, and IV.
- D. If there is no "Other Criteria" the Agency intends to use for selection, the Agency will enter "None" in Part III, item G.
- E. Any additional information the Contractor wishes to include must be listed on the last page of the Questionnaire (page 9) and attached to the Contractor's Statement of Qualifications and Questionnaire.

### 3.5.6 Evaluation of Statements of Qualification

- A. Upon receiving the Contractor's Statement of Qualifications and Questionnaire, the Agency shall review them for completeness. In the event of an incomplete submittal, the Agency may contact the Contractor to request the required information. The Contractor will be considered and evaluated only if the information is received prior to convening the Committee Evaluation meeting.
- B. The Agency will distribute the submittals to all Committee members for their evaluation.
- C. The Committee will convene a meeting for the purpose of evaluating the submittals using the following evaluation criteria:
  1. Past performance/Recent construction projects completed.
  2. Ability of proposed project personnel.
  3. Financial information regarding ability to provide required bonding and insurance.
  4. Location of proposed office in relation to the project area.
  5. General project experience.
  6. Experience with state contracts awarded; and
  7. Other criteria included in the solicitation.
- D. Each voting member must complete an evaluation of all submittals using the Construction Prequalification Selection Committee Member Contractor Evaluation (SE-115). If a voting member determines more than one Contractor to be equally qualified, the voting member must re-evaluate their rankings to break any ties in scores prior to submitting the SE-115 to the Committee Chair (Chair).
- E. After each voting member has completed and submitted their SE-115 to the Chair, the Chair will verify the individual scoring and compile the individual rankings into a committee ranking on the Construction Prequalification Selection Committee Summary (SE-117).

**3.5.7 Final Determination and Approval of Prequalified Contractors**

- A. The Committee’s decision on the selection of prequalified Contractors is final, subject only to the Agency’s internal approval process.
- B. Once the Agency determines the selection of prequalified Contractors, the Agency must submit a Request for Approval of Prequalified Contractors for Construction (SE-160) and submit to OSE for approval along with the following:
  - 1. A copy of signed SE-114 for each Committee Member.
  - 2. A copy of all SE-115’s and the SE-117; and
  - 3. Contractor licenses (from SCLLR website) for the selected Contractors/Subcontractors.
- C. After review, OSE will return an approved copy of the SE-160 to the Agency.

**3.5.8 Notice of Prequalification of Contractors and Bidding**

- A. The Agency must post the Notice of Prequalification of Contractors – Design-Bid-Build (SE-170) in the location shown in the Invitation. The Agency must also send the SE-170 electronically to all Contractors that responded to the Invitation and OSE on the same day it is posted.
- B. The Agency may then proceed with the bidding process as follows:
  - 1. If Prime Contractors have been prequalified, construction documents ready for bidding may be delivered to them without advertising the project in SCBO. The Agency may still use the SE-310 to provide information on bidding. Prime Contractors are responsible for soliciting competitive bids from subcontractors.
  - 2. If only Subcontractors have been prequalified, bidding procedures as outlined in Chapter 6 shall be followed.
    - a. The prequalified Subcontractors will be listed in the construction documents as the only qualified subcontractors allowed to bid particular scopes of work.
    - b. For those scopes of work, Prime Contractors shall only solicit bids from the prequalified Subcontractors listed.

**3.6 SELECTING PERFORMANCE AND PAYMENT SECURITY**

**3.6.1** At the same time an Agency determines which project delivery method to use on a project, it must also determine the performance and payment security requirements for the project and set these requirements forth in its written determination of appropriate project delivery method.

- A. Performance security guarantees that the Contractor will perform the work of the contract and payment security guarantees that the Contractor will pay his Subcontractors, suppliers, laborers, etc.
- B. Both performance and payment security are required in the amount of 100% of the contract price less the cost of operation, maintenance, and finance.
- C. The Agency may also require the Contractor to provide operations and maintenance period security in the form of surety bonds and letters of credit covering cost of preventing infrastructure service interruptions for a period up to 12 months and the Agency may require written guarantees from a parent corporation securing re-procurement cost in the event of operations period default.

<b>DELIVERY METHOD</b>	<b>CONTRACTOR</b>	<b>SECURITY REQUIRED</b>	<b>OPTIONAL SECURITY</b> (Only required when Agency chooses this option)
Design-Bid-Build	General Contractor with contract ≤ \$50,000	None	Performance Security ≤ 100% contract price & Payment Security ≤ 100% contract price.
	General Contractor with contract > \$50,000	Performance Security = 100% contract price & Payment Security = 100% contract price.	N/A
CM-R	Construction Manager-at-Risk	Performance Security = 100% of construction phase Guaranteed Maximum Price (GMP). Payment Security=100% construction phase GMP. If construction is divided into phases, security may be provided in phases as well.	May require security for pre-construction phase work.

<b>DELIVERY METHOD</b>	<b>CONTRACTOR</b>	<b>SECURITY REQUIRED</b>	<b>OPTIONAL SECURITY</b> (Only required when Agency chooses this option)
D-B	Design-Builder	Performance Security = 100% of contract price & Payment Security = 100% of contract price (Contract Price includes design costs). If construction is divided into phases, security may be provided in phases as well.	N/A
DBOM	Design-Build-Operator	Performance Security Performance Security = 100% of contract price less cost of operations and maintenance & Payment Security = 100% of contract price less cost of operations and maintenance. If construction is divided into phases, security may be provided in phases as well.	Operations Phase performance bond, letter of credit to cover cost of preventing infrastructure service interruptions for a period up to 12 months, and/or parent corporation written guarantee securing re-procurement cost in contractor defaults during operations period.
DBFOM	Design-Build-Financier-Operator	Performance Security = 100% of contract price less cost of financing, operations, and maintenance & Payment Security = 100% of contract price less cost of financing, operations, and maintenance. If construction is divided into phases, security may be provided in phases as well.	Operations Phase performance bond, letter of credit to cover cost of preventing infrastructure service interruptions for a period up to 12 months, and/or parent corporation written guarantee securing re-procurement cost in contractor defaults during operations period.

### 3.6.2 Form of Required Performance and Payment Security

#### A. Performance Security

1. When the Procurement Code requires performance security, the Contractor must provide a certified cashier's check or surety bond in an amount equal to 100% of the contract price less finance, operations, and maintenance costs, if any.
2. A performance bond must be issued by surety company
  - a. licensed in South Carolina.
  - b. having a minimum Best Rating of performance. "A" as stated in the most current publication of "Best Key Rating Guide, Property Liability"<sup>1</sup>; and
  - c. having a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance.
3. If the Contractor provides a performance bond, the Surety must write the bond on the Performance Bond (SE-355).

#### B. Payment Security

1. When the Procurement Code requires payment security, the Contractor must provide a certified cashier's check or surety bond in an amount equal to 100% of the contract price less finance, operations, and maintenance costs, if any.
2. A payment bond must be issued by surety company
  - a. licensed in South Carolina.
  - b. having a minimum Best Rating of performance "A" as stated in the most current publication of "Best Key Rating Guide, Property Liability"<sup>1</sup>; and
  - c. having a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance.
3. If the Contractor provides a payment bond, the Surety must write the bond on the Labor and Material Payment Bond (SE-357).

### 3.6.3 Form of Optional Performance and Payment Security

**A. Contracts of \$50,000 or less:** When security is required on construction of \$50,000 or less, security shall be in the form set forth in 3.6.2 above. However, the Agency may, upon written justification and with the approval of OSE, allow the use of a "B+" rated bond.

#### **B. Operations Phase Security**

##### **1. Performance Bond**

- a.** The Agency may choose to require an operations period performance bond securing the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract.
- b.** An operations period performance bond must be in the amount of 100% of that portion of the contract price that includes the cost of operation and maintenance services during the period covered by the bond. When contract period for operation and maintenance will be longer than 5 years, an operations period performance bond of five years' duration, is acceptable provided that such bond is renewable by the Contractor every five (5) years during the contract, and provided further, that the Agency must require the Contractor to make a firm contractual commitment to maintain such bond in full force and effect throughout the contract term.
- c.** An operations period performance bond must be issued by a surety company
  - 1)** licensed in South Carolina.
  - 2)** having a minimum Best Rating of performance "A" as stated in the most current publication of "Best Key Rating Guide, Property Liability"<sup>1</sup>; and
  - 3)** having a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance.

##### **2. Letters of Credits to Cover Interruptions in Operation**

An Agency may choose to require an irrevocable letter of credit with a banking institution in this State that secures the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract, in an amount sufficient to cover 100% of the cost of performing such operation and maintenance services during the first 12 months of the contract with annual adjustments every year thereafter for the term of the contract.

##### **3. Guarantees**

An Agency may choose to require a written guarantee that secures the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract, in an amount that is sufficient to cover 100% of the cost of performing such operation and maintenance services during the contract period.

## **3.7 ESTABLISHING THE PROJECT**

**3.7.1** The procedure for determining if a project needs to be established as a PIP and initiating a PIP is set forth in Sections 2 through 5 of the Capital Budget Office's "Policies and Guidance for Establishment and Maintenance of Permanent Improvement Projects": <https://www.admin.sc.gov/budget/capitalmanual> .

**3.7.2** Phase 1 approval will allow the Agency to define the project by developing the program, budget, and schedule.

- A.** If the selected project delivery method is Design-Bid-Build, the Agency may continue under Phase 1 approval through the completion of schematic design prior to obtaining JBRC Phase 2 approval, which will allow the Agency to proceed with complete design, bidding, and construction.
- B.** While the same is true if the Agency selected CM-R, in such case, the Agency may want to seek permission to hire the CM-R as a part of Phase 1 approval. This will enable the CM-R to provide valuable input during the development of the schematic design.
- C.** If the selected method is D-B, DBOM, or DBFOM, the Agency will, finish developing its design requirements under JBRC Phase 1 approval and then obtain JBRC Phase 2 approval to proceed with soliciting and contracting with a design-builder.

### 3.8 PERFORMANCE EVALUATION

- 3.8.1** The Consolidated Procurement Code requires the State to select Design Professionals (Architects, Engineers, Construction Managers, Land Surveyors, etc.) solely based on seven (7) specific qualification factors, including “past performance”. It also requires the State to award construction contracts to the lowest responsive and responsible bidder. One of the elements in the State’s standards of responsibility is “a satisfactory record of performance”.
- 3.8.2** For projects that have a construction contract that exceeds \$100,000 or an A/E fee that exceeds \$50,000, OSE has developed a procedure to systematically evaluate the performance of A/Es and Contractors and to compile a record of a firm’s past performance.
- 3.8.3** Professional Services Evaluation
- A.** OSE has created the Professional Services Performance Evaluation (SE-297) to be used to evaluate A/E performance. The goal of the evaluation process is to measure an A/E’s performance fairly and consistently based on factual information.
  - B.** The SE-297 provides for an evaluation of three phases: Design Development, Construction Documents/Bidding, and Construction. Agencies are encouraged to evaluate firms relative to the requirements of the A/E’s contract and the OSE Manual.
  - C.** As part of the initial contract negotiations, the Agency and the A/E shall discuss the relative importance of each evaluation category, the nature and complexity of the project, and then complete the SE-297 with the weight factors assigned to each phase and category.
  - D.** Within 30 days after the completion of each phase, the Agency shall evaluate the A/E’s performance for each category and provide the A/E and OSE with a copy of the completed SE-297 along with any comments. Evaluations will be placed in the A/E Performance Evaluation Record File, with copies in the Record Files for each Consultant. The A/E or any Consultant may submit responses to the evaluation, which will be placed in the appropriate Performance Evaluation Record File without further comment or response.
- 3.8.4** Construction Contractor Performance Evaluation
- A.** OSE has created the Construction Contactor Performance Evaluation (SE-397) to be used to evaluate contractor performance. The goal of the evaluation process is to measure Contractor and Subcontractor performance fairly and consistently based on factual information.
  - B.** The SE-397 assists the Agency in measuring a Contractor’s performance considering general industry practices and the requirements of the contract documents including, but not limited to the technical specifications, drawings, specified completion date, policies and procedures associated with the contract documents, and the OSE Manual.
  - C.** As part of the pre-construction process the Agency and the Contractor, and its major subcontractors, shall discuss the relative importance of each evaluation category and the nature and complexity of the project and then complete the SE-397 with the weight factors assigned to each category.
  - D.** Within 30 days after final payment, the Agency shall evaluate the Contractor’s performance for each category and provide the Contractor, A/E and OSE with a copy of the completed SE-397 along with any comments. Evaluations will be placed in the Contractor Performance Evaluation Record File, with copies in the Record Files for each Subcontractor. The Contractor or any Subcontractor may submit responses to the evaluation, which will be placed in the appropriate Performance Evaluation Record File without further comment or response.

<sup>1</sup>For Best Ratings, go to <http://www.ambest.com/home/default.aspx>. The Agency must register with the site to conduct a search. There is no cost to register.