

## CHAPTER 9

### INDEFINITE DELIVERY CONTRACTS

#### 9.1 RELATED STATUTORY AUTHORITY

- 9.1.1** SC Code § 11-35-830 creates within the State Fiscal Accountability Authority (SFAA) the State Engineer's Office and requires that all procurements of construction, architectural and engineering, construction management, and land surveying services and any pre-procurement and post-procurement activities in this area be conducted in accordance with the Manual for Planning and Execution of State Permanent Improvements.
- 9.1.2** SC Code § 11-35-3230(2) limits entering into a small professional services contract if the sum of all small contract fees, excluding reimbursable expenses, paid to the professional in the 24 months preceding contract negotiations exceeds \$75,000 for small contracts. For an approved higher education institution, this limit is \$150,000.
- 9.1.3** SC Code § 11-35-3310 allows agencies to award indefinite delivery contracts for architectural-engineering and land surveying services pursuant to § 11-35-3220 and construction services pursuant to § 11-35-3015.
- 9.1.4** SC Code Regulation 19-445.2145(H) requires the State Engineer's Office to establish working procedures for indefinite delivery construction contracts and to include those procedures in the Manual for Planning and Execution of State Permanent Improvements.

#### 9.2 DEFINITIONS

- 9.2.1** The term "Indefinite Delivery Contract" (IDC) means a contract that does not procure or specify a defined quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of delivery orders for the performance of tasks during the period of the contract.
- 9.2.2** A Professional Services IDC is a contract whereby the professional agrees to provide the Agency professional services on an "as-needed" basis during the term of the contract. Agencies procure Professional Services IDC's in the same manner as any professional service contract as set forth in Chapter 4 of this manual. Section 9.2 below gives instructions for the use of indefinite delivery contracting for professional services.
- 9.2.3** A Construction Services IDC is a contract whereby the contractor agrees to provide the Agency construction services on an "as-needed" basis during the term of the contract. Agencies procure Construction Services IDC's in the manner set forth in Section 9.3 below.
- 9.2.4** A Delivery Order is an order issued by an Agency for either a professional or a contractor to perform work (tasks) under an IDC.

#### 9.3 GENERAL REQUIREMENTS FOR SOLICITATION OF AN IDC

- 9.3.1** The solicitation for an IDC contract shall include the following:
- A. Period of the contract (an IDC may not exceed two years);
  - B. Maximum dollar value of the services to be procured under the contract;
  - C. Maximum dollar value of the services to be procured under a single delivery order;
  - D. Statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer.
  - E. Any geographic limitations to the contract, e.g., a specific campus of the Agency.
  - F. Any required contractor response times
- 9.3.2** Each delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order so the full price for the performance of the work can be established when the order is placed. Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract. Orders must not be artificially divided.
- 9.3.3** At any given time, a governmental body may enter into one or more IDCs in accordance with the provisions contained in this chapter for each of the following categories: architectural services, landscape architectural services, professional engineering services, land surveying services, interior design services, construction management agent services and each licensing classification and subclassification for construction services. Licensing classification and subclassification shall have the meaning provided by Chapter 11 of Title 40 SC Law.

## 9.4 PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACTING

### 9.4.1 The Professional Services Indefinite Delivery Contract

#### A. PROCURING PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACTS

1. The agency procures Architect/Engineer, Land Surveyor, and Construction Management Agent service (hereinafter “professional service”) IDC’s in the same manner as all professional services described in Chapter 4, except using the 600 series forms. Unless expressly modified by this section, the Agency must follow the procedures set forth in Chapter 4 for soliciting professional services, selecting professionals, submitting documentation to OSE, obtaining OSE approvals, and contracting with professionals.
2. Agencies need to obtain an IDC project number from OSE prior to soliciting for resumes. To obtain an IDC number, contact OSE at (803) 737-0634. OSE will assign an IDC project number with the prefix “D” following the Agency number and the assigned project manager, e.g., J16-D027-PM.
3. If the Agency intends to award more than one contract for a specific category of service, the Agency must place notification in the advertisement for professional services that it will award multiple contracts and the maximum number of contracts it intends to award. The number of awards an Agency makes shall not exceed the number specified in the advertisement. The Agency should interview at least 2 additional firms over the number of contracts it intends to award.
4. With OSE approval of a Request to Award Multiple Professional Services IDCs for the same Services (SE-600), the Agency may, by notification in the advertisement for professional services, award IDC contracts to more than five firms under the same advertisement and interview process.
5. In the event the Agency makes multiple awards, the agency must, in coordination with OSE, assign a letter identification to the project number so that each contract will have a unique contract number, e.g., J16-D027-PM-A.

#### B. CONTRACT FORM

The Agency shall use the Professional Services Indefinite Delivery Contract (SE-640), for its large and small professional services IDCs. The contract must be completed in a manner consistent with the requirements outlined herein.

#### C. PROFESSIONAL SERVICES IDC LIMITATIONS

S.C. Code § 11-35-3310(2) raises the IDC limits under a small professional service IDC to \$50,000 for approved higher education institutions. All colleges/universities are approved by the statute to use these higher limits. Each technical college must receive approval from the State Board for Technical and Comprehensive Education to use the higher IDC Limits.

1. The sum of all delivery orders issued during the two year term of the contract under a small professional service IDC may not exceed \$25,000. For an approved higher education institution, this limit is \$50,000. These maximum amounts do not include payments for reimbursable expenses.
2. If the agency has had other small contracts with a particular professional, the agency may not be able to contract with that professional using a small IDC. State Law prohibits entering into a small professional services contract if the sum of all small contract fees, excluding reimbursable expenses, paid to the professional in the 24 months preceding contract negotiations exceeds \$75,000 for small contracts. For an approved higher education institution, the limit is \$150,000.
3. The sum of all Delivery Orders issued during the two year term of the contract under a large professional services IDC may not exceed \$300,000. Individual delivery orders under these contracts may not exceed \$100,000. For an approved higher education institution, the sum of all Delivery Orders issued during the two year term of the contract under a large professional services IDC may not exceed \$500,000. For an approved higher education institution, individual delivery orders under these contracts may not exceed \$200,000.
4. Agencies may not use multiple IDCs or delivery orders to receive professional services normally procured as full scope professional services contract, unless both:
  - a. The agency has staff qualified to provide project management; and
  - b. The cumulative professional fees for the project do not exceed \$100,000 for large IDCs and \$25,000 for small IDCs. For an approved higher education institution cumulative professional fees for the project do not exceed \$200,000 for large and \$50,000 for small.
5. The Agency shall not issue multiple delivery orders to a single indefinite delivery professional for work on an individual professional services project. An individual professional services project, as used in this chapter, is an individual project and includes all professional services necessary for or related to an individual construction project.

6. Because of the coordination and accompanying liability and risk management issues attendant to contracting with multiple designers to accomplish a project design, the Agency should not use multiple professional IDCs for work on an individual project. However, if they do, the combined fees may not exceed the single delivery order limit.
7. The agency may not amend a contract to extend its termination date beyond 2 years from the date of execution or above the maximum dollar limits stated above.

#### 9.4.2 Delivery Orders Assigned to the Professional Services IDC

- A. The Agency is authorized to issue delivery orders for professional services without first obtaining OSE approval.
- B. All Professional Services Delivery Orders must be awarded based on qualifications and NOT on price.
- C. An Agency may not use a Professional Services IDC to broker work that is not covered by the professional service requested for the IDC.
- D. DELIVER ORDER FORM: The Agency shall use the Professional Services IDC Delivery Order – Small Contract (SE-635), with small professional services IDC's and the Professional Services IDC Delivery Order – Large Contract (SE-645), with all other IDCs and include the following:
  1. Defined scope of work;
  2. Description of the services and deliverables the professional will provide;
  3. A fee schedule for services the professional will provide; and
  4. Description of the timeframe for completion of the work.
- E. AMENDMENTS TO PROFESSIONAL SERVICES DELIVERY ORDERS
  1. The parties may amend a delivery order provided the amendment does not cause the value of the delivery order or the IDC to exceed the statutory limits outlined in subsection 9.2.1C.
  2. Either the agency or the professional may initiate a request for an amendment to the delivery order using the Professional Services IDC Delivery Order Modification – Small Contract (SE-638), or the Professional Services IDC Delivery Order Modification – Large Contract (SE-648).
  3. In either event, the A/E should prepare a cost and technical proposal for the amendment and submit it to the agency for approval. The cost proposal must be based on the fee schedule of the delivery order and the estimated labor/hour breakdown for anticipated services under the amendment.
- F. COMPLETION OF THE DELIVERY ORDER WORK AFTER THE IDC TERMINATION DATE
  1. Work on individual projects *started* within the two-year IDC contract period may continue past the time limit to bring the work to an expeditious completion.
  2. In such event, the agency must notify OSE in writing, in advance, of the need to start a project within the two-year period that it expects to continue past the time limit. Without such notification, OSE will automatically close out the IDC at the end of the two year contract period.

### 9.5 CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACTING

#### 9.5.1 The Construction Services Indefinite Delivery Contract

- A. PROCURING CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACTS
  1. Agencies need to obtain an IDC project number from OSE prior to soliciting bids. To obtain an IDC project number, contact OSE at (803) 737-0634. OSE will assign an IDC number with the prefix "D" following the Agency number and the assigned project manager, e.g., J16-D027-PM.
  2. The Office of State Engineer (OSE) must authorize award of all construction services IDCs regardless of the agency's construction contract certification.
  3. If the Agency intends to award more than one contract for a specific category of construction, the Agency must place notification in the advertisement for construction services that it will award multiple contracts and the maximum number of contracts it intends to award. The number of awards an Agency makes shall not exceed the number specified in the advertisement.
  4. With OSE approval of a Request to Award Multiple Construction Services IDCs for the same Services (SE-650), an Agency may award IDC contracts to more than five contractors under the same invitation for bid.
  5. In the event the Agency makes multiple awards, the agency must, in coordination with OSE, assign a letter identification to the project number so that each contract will have a unique contract number, e.g., J16-D027-PM-A.

**B. CONTRACT FORM**

The Agency shall use the Construction Services Indefinite Delivery Contract (SE-680), along with the General Conditions to Construction Services Indefinite Delivery Contract (SE-685), for its construction services IDCs. The contract must be completed in a manner consistent with the requirements outlined herein.

**C. CONSTRUCTION SERVICES IDC LIMITATIONS**

1. The sum of all delivery orders issued under a single IDC during the two-year term of the contract may not exceed \$750,000. For an approved higher education institution, this limit is \$1 million.
2. The maximum amount the Agency may expend under a single construction IDC for work on an individual construction project may not exceed \$150,000. This means that no delivery order including the value of all amendments may exceed \$150,000. For an approved higher education institution, the limit is \$250,000.
3. Agencies may not use multiple IDCs or delivery orders to a single indefinite delivery contractor for work on an individual construction project, unless:
  - a. The agency has staff qualified to provide project management; and
  - b. The total cost of an individual construction project performed using multiple IDC contractors does not exceed \$150,000. For an approved higher education institution, this limit is \$250,000. OSE hereby disapproves of any individual construction project delivered through indefinite delivery contracting where the cost estimate for the project exceeds these amounts. The Agency may not divide an individual construction project into multiple projects to avoid this limitation.
  - c. An individual construction project as used in this chapter is an individual project and includes all related construction work on a single project.
4. The agency may not amend a contract to extend its termination date beyond 2 years from the date of execution or above the maximum dollar limits stated above
5. Before the Agency can initiate an individual project using indefinite delivery contractors estimated to cost more than the lower limits established for a Permanent Improvement Project in the Manual for Planning and Execution of State Permanent Improvements, Part I, the Agency must submit the project to the Joint Bond Review Committee (JBRC) and State Fiscal Accountability Authority for approval (SFAA).

**9.5.2 Bid and Award of Construction IDC**

**A. METHOD OF AWARD:** The bidding documents must accurately describe the method the Agency plans to use to arrive at a Base Bid. The Agency may use one of two methods for bidding IDCs:

**1. Low Bid of a Representative Project**

Under this method, the Agency uses an actual project (representative project) to solicit bids - not a hypothetical project nor a previously completed project, but one that may be constructed by the low bidder.

- a. The Agency awards IDCs to the lowest responsive and responsible bidders and will then award the representative project to the lowest bidder as the first delivery order, as long as the low bid does not exceed the statutory amount.
  - 1) If the representative project's lowest bid exceeds the construction budget by more than 10%, the delivery order cannot be awarded; however, the IDC contracts may still be awarded for the two year term.
  - 2) If only one bid is received, the Agency may award the representative project only, using the SCOSE AIA A101 and SCOSE AIA A201 documents and using the PIP or Non-PIP project number. The IDC cannot be awarded.
- b. The Agency must contract with a minimum of three contractors for each category of work (general construction, mechanical, etc.) for which it intends to issue delivery orders.
- c. When the Agency wants to issue a delivery order, it must seek quotes from all IDC contractors awarded a contract pursuant to a single solicitation and award the delivery order to the contractor submitting the lowest quote.

**2. Unit Prices**

- a. Under this method, the Agency develops a comprehensive list of unit prices it will use in the bidding documents. The bid form lists estimated quantities and a description of each unit of work the bidders are to price. The Agency must provide appropriate quantities for each unit of work that will reflect the estimated amount of work a contractor will perform under a typical delivery order. The bidders must supply the unit price and multiply it times the number of units listed to arrive at an extended price. The total of all extended prices becomes the bidder's base bid.

- b. The Agency may develop the bid package using an actual or hypothetical project with a complete take-off of work to be included for unit pricing. The Agency should include in the bid package a basis for adjusting the unit price should the actual quantity purchased vary substantially from the projected quantity.
- c. Pricing for delivery orders and subcontracted work must be handled using the unit prices bid.

**B. BID SECURITY**

The Agency shall require bid security equal to 5% of the representative project when using the low bid method or \$7,500 when using unit prices.

**C. CONTRACTORS' LICENSING**

- 1. A contractor bidding on IDC projects must be licensed as required by the SC Contractor's Licensing Board (LLR) for the discipline of work covered by the solicitation and the license must allow the bidder to perform work valued at \$150,000 for agencies and \$250,000 for higher education institutions.
- 2. An Agency may not use an IDC contractor to broker work that is not covered by the contractor's license.
- 3. The Agency shall verify licensing with LLR. OSE will not comment on licensing issues.

**D. CONTRACT AWARD**

At the successful conclusion of the sealed bidding process for the IDC, the Agency must post the Notice of Intent to Award Indefinite Delivery Contract (SE-670) in accordance with the procedures set forth in Chapter 6 of this manual.

**9.5.3 Delivery Orders Assigned to the Construction Services IDC**

**A. OSE REVIEW**

- 1. Unless the work is within the Agency's construction contract procurement certification, all work to be performed under a Delivery Order must be reviewed and approved by OSE for compliance with applicable building codes before the Delivery Order is issued. Applicable codes are set forth in Chapter 5 of this manual.
- 2. If OSE review and approval is required, the Agency must obtain a Non-PIP project number and project manager from OSE for the Delivery Order or use an established PIP project number under which the work of the Delivery Order will be included.
- 3. The Agency will send the OSE-assigned project manager a copy of whatever documents are being sent to the IDC contractor(s) for pricing along with a copy of the Delivery Order (SE-690) indicating that it is not within their construction contract certification.
- 4. The OSE project manager will review the documents and email the Agency their comments; if any. When the project is considered approved, the OSE project manager will sign and date the Delivery Order (SE-690) and the return it to the Agency for their signature and the Contractor's.
- 5. The Agency will then send OSE a copy of the executed SE-690 issued for the project. The Agency shall include this signed Delivery Order in the project file for the auditors

**B. METHOD OF AWARD**

**1. Low Bid of a Representative Project**

- a. If the Agency has awarded IDCs using the low bid of a representative project method, it must solicit competitive bids from all contractors on this IDC. If one or more IDC contractors decline to provide a bid, the Agency must document that fact.
- b. The Agency must award the Delivery Order to the contractor providing the lowest bid. The Agency shall make this award using the Construction Services IDC Delivery Order (SE-690).
- c. The Agency must assure that it has at least three contracts awarded pursuant to a single solicitation with active IDCs. If the Agency only awarded three IDCs originally and it has already awarded one of the original contractors \$750,000 in delivery orders, or \$1 million for an approved Higher Education Institution, the Agency should solicit additional IDC contractors as outlined above.

**2. Unit Prices**

**a. Single IDC Contractor**

- 1) If the agency has awarded an IDC to a single contractor, it may award delivery orders to that contractor using the pricing method specified in the IDC.
- 2) If the contractor proposes to provide the work at a price less than that calculated under the method prescribed in the IDC, the Agency may use the lower price if it includes in the file written documentation that the price is indeed lower.

- 3) Before issuing the delivery order, the Agency should take in order the following steps:
    - a) Meet with the contractor to develop a written scope of work; and
    - b) Agree with the contractor in writing that the bidder's unit prices are applicable to the scope of work.
  - 4) After taking these steps the Agency may issue a delivery order for the work which includes the agreed upon scope of work and unit prices applicable to that scope of work.
  - 5) Before an agency issues a delivery order where more than 20% of the work is not covered by unit prices bid by the contractor, the agency should:
    - a) Determine whether the scope of work is within the scope of the solicitation for IDC construction services. If not, the agency should not issue a delivery order for the work under that IDC.
    - b) If the Agency determines that the proposed delivery order is within the scope of the solicitation for IDC construction services and decides to proceed using an IDC contractor selected under the solicitation, the agency must request that the single bidder solicit competitive quotes on the work from multiple sub-contractors. The quote provided by the IDC contractor should be divided to separate work covered by the bidder's unit prices and work not covered. The covered work should be priced at or below the value derived by applying the contractor's unit prices for the covered work.
- b. Multiple IDC Contractors
- 1) If the agency has awarded multiple contracts, it may provide each contractor a fair opportunity to receive delivery orders under the IDC by the use of competitive bidding among the various IDC contractors for an individual delivery order. However, if competitive bidding is used, each Indefinitely Delivery Contractor's price should not exceed the price obtained using their unit prices bid.
  - 2) If competitive bidding is not used, the price of a delivery order must be determined in the manner set forth in 2.a. above.

#### C. DELIVERY ORDER FORM

1. The Agency shall award a delivery order using the SE-690.
2. If the project is submitted to OSE for review, the 'PROJECT NUMBER' will either be the PIP or Non-PIP number of the project for which the Work is to be completed. If the project is not required to obtain OSE approval, the "PROJECT NUMBER" may be the IDC project number with a 'phase' suffix.
3. The agency must establish delivery order numbers assigned to the contract for its record keeping purposes.

#### D. AMENDMENTS TO CONSTRUCTION SERVICES DELIVERY ORDERS

1. The parties may amend a Delivery Order provided the amendment does not cause the value of the Delivery Order or the IDC to exceed the statutory limits outlined in subsection 9.3.1.C.
2. Either the agency or the contractor may initiate a request for an amendment to the Delivery Order using form Construction Services IDC Delivery Order Modification (SE-695). The Agency shall price any amendment in the same manner as the price for the original delivery order.

#### E. PERFORMANCE AND PAYMENT BONDS

1. The Agency must obtain Performance Bonds and Labor & Material Payment Bonds in the amount of 100% of the delivery order amount for all delivery orders exceeding \$50,000.
2. The Agency may require bonds on delivery orders under \$50,000.

#### F. COMPLETION OF THE DELIVERY ORDER AFTER THE IDC TERMINATION DATE

1. Work on individual projects started within the two-year IDC contract period may continue past the time limit to bring the work to an expeditious completion.
2. In such event, the agency must notify OSE in writing, in advance, of the need to start a project within the two-year period that it expects to continue past the time limit. Without such notification, OSE will automatically close out the IDC at the end of the two year contract period.