

## CHAPTER 9

### INDEFINITE QUANTITY AND TASK ORDER 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 § 11-35-3310 allows Agencies to award Indefinite Quantity Contracts for architectural-engineering and land surveying services pursuant to § 11-35-3220 and § 11-35-3230.
- 9.1.3 SC Code § 11-35-3320 allows Agencies to award Task Order Contracts to acquire construction services pursuant to § 11-35-1530, not including paragraph (4) (Request for Qualifications) or paragraph (8) (Negotiations).

#### 9.2 DEFINITIONS

- 9.2.1 The term "Indefinite Quantity Contract" (IDQ) means a Professional Services 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 work during the period of the contract. Agencies procure Indefinite Quantity Contracts in the same manner as any professional services contract as set forth in Chapter 4. Section 9.4 gives instructions for the use of indefinite quantity contracting.
- 9.2.2 The term "Task Order Contract" (TOC) means a Construction Services contract that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of Task Orders for the performance of tasks during the period of the contract. Agencies procure TOCs in the manner set forth in Section 9.6.
- 9.2.3 A "Delivery Order" is an order issued by an Agency for a professional to perform work under an IDQ.
- 9.2.4 A "Task Order" is an order issued by an Agency for a Contractor to perform tasks under a TOC.

#### 9.3 GENERAL REQUIREMENTS FOR SOLICITATION OF AN INDEFINITE QUANTITY CONTRACT

- 9.3.1 The solicitation for an IDQ contract shall include the following:
  - A. Period of the contract.
  - 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 to be procured under the contract in a manner that will enable a prospective Offeror to decide whether to submit an offer; and
  - E. Any geographic limitations to the contract, e.g., a specific campus of the Agency.
- 9.3.2 Each Delivery Order shall include a statement of work that clearly specifies all work to be performed under the Delivery Order so the full price for the performance of the work can be established when the Delivery Order is placed. Delivery Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract. Delivery Orders must not be artificially divided.
- 9.3.3 At any given time, an Agency may enter into one or more IDQs 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 and construction management agent services.

#### 9.4 PROFESSIONAL SERVICES INDEFINITE QUANTITY CONTRACTING (IDQ)

##### 9.4.1 The Indefinite Quantity Contract

##### A. PROCURING INDEFINITE QUANTITY CONTRACTS

- 1. The Agency procures Architect/Engineer, Land Surveyor, and Construction Management Agent service (hereinafter "professional service") IDQ'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 (Small Contracts and Large Contracts) for soliciting professional services, selecting professionals, submitting documentation to OSE, obtaining OSE approvals, and contracting with professionals.

2. Agencies need to obtain an IDQ contract number from OSE prior to soliciting for resumes. OSE will assign an IDQ contract number with the prefix "P" following the Agency number and the assigned project manager, e.g., J16-P027-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 IDQ Contracts for the Same Services (SE-600), the Agency may, by notification in the advertisement, award IDQ contracts to more than five firms under the same advertisement and interview process.

**B. CONTRACT FORM**

The Agency shall use the Indefinite Quantity Contract (SE-640), for large and small IDQs. The contract must be completed in a manner consistent with the requirements outlined herein.

**C. INDEFINITE QUANTITY CONTRACT LIMITATIONS**

**1. Small IDQ Contracts**

- a. The sum of all Delivery Orders issued during the two-year term of the contract under a small IDQ may not exceed \$50,000. This maximum amount does not include payments for reimbursable expenses.
- b. 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 IDQ. The total value of fees paid to a single firm may not exceed \$150,000, excluding reimbursable expenses, for all small professional contracts awarded by the Agency to the firm in a 24-month period.

**2. Large IDQ Contracts**

- a. The sum of all Delivery Orders issued during the two-year term of the contract under a large IDQ 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 IDQ may not exceed \$500,000. For an approved higher education institution, individual Delivery Orders under these contracts may not exceed \$200,000.
- b. The maximum amounts for large IDQs include reimbursable expenses.
3. Agencies may not use multiple IDQs 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 an individual project may not exceed \$100,000 for large IDQs and \$50,000 for small IDQs. For an approved higher education institution cumulative professional fees for an individual project may not exceed \$200,000 for large IDQs.
4. The Agency shall not issue multiple Delivery Orders to a single firm for work on an individual project. An individual project, as used in this chapter, is a project that includes all professional services necessary for, or related to, the construction of a specific project.
5. 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 IDQs for work on an individual project. However, if they do, the combined fees may not exceed the single Delivery Order limit.
6. The Agency shall 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 IDQ**

- A. The Agency is authorized to issue Delivery Orders for indefinite quantity contracts without obtaining OSE approval.
- B. All IDQ Delivery Orders must be awarded based on qualifications and NOT on price.
- C. An Agency shall not use an IDQ to broker work that is not covered by the professional service awarded in the IDQ.

- D. DELIVER ORDER FORM: The Agency shall use the Indefinite Quantity Contract Delivery Order – Small Contract (SE-635) for small IDQ's and the Indefinite Quantity Contract Delivery Order – Large Contract (SE-645) for all other IDQs and include the following:
  - 1. Defined scope of work.
  - 2. Description of the services and deliverables the professional will provide.
  - 3. Cost information for services the professional will provide; and
  - 4. Schedule for completion of the work.
- E. AMENDMENTS TO INDEFINITE QUANTITY CONTRACT DELIVERY ORDERS
  - 1. The parties may amend a Delivery Order provided the amendment does not cause the value of the Delivery Order or the IDQ to exceed the statutory limits outlined in subsection 9.4.1.C.
  - 2. The Agency or the professional may initiate a request for an amendment to the Delivery Order using the Indefinite Quantity Contract Delivery Order Modification – Small Contract (SE-638), or the Indefinite Quantity Contract Delivery Order Modification – Large Contract (SE-648).
  - 3. 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 IDQ TERMINATION DATE
  - 1. Work on individual projects started within the two-year IDQ 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 IDQ at the end of the two-year contract period.

## 9.5 GENERAL REQUIREMENTS FOR SOLICITATION OF A TASK ORDER CONTRACT (TOC)

### 9.5.1 The solicitation for a TOC shall include the following:

- A. Period of the contract, including extensions.
- B. Maximum dollar value of the services to be procured under the contract.
- C. Maximum and minimum dollar value of the services to be procured under a single Task Order.
- D. A description that reasonably describes the licensing classification and the general scope, nature, complexity, and purposes of the services to be procured under the contract in a manner that will enable a prospective Offeror to decide whether to submit an offer.
- E. The procedures the Agency will use for awarding Task Orders.
- F. The geographic area to which the contract applies, e.g., a specific campus of the Agency; and
- G. The number of Task Order Contracts to be awarded.

### 9.5.2 Every award of a Task Order Contract must be approved by OSE.

### 9.5.3 At any given time, an Agency may enter into one or more TOCs in accordance with the provisions contained in this chapter for each licensing classification and subclassification for construction services. Licensing classification and subclassifications shall have the meaning provided by Chapters 10, 11 and 79 of Title 40 SC Law.

## 9.6 CONSTRUCTION SERVICES TASK ORDER CONTRACTING

### 9.6.1 The Task Order Contract

#### A. PROCURING TASK ORDER CONTRACTS

- 1. Agencies obtain a TOC contract number from OSE prior to soliciting qualifications. OSE will assign a TOC number with the prefix "C" following the Agency number and the assigned project manager, e.g., J16-C027-PM.
- 2. The Agency must award four (4), and only four (4), contracts for a specific license classification or subclassification.
- 3. OSE must approve award of all Task Order Contracts regardless of the Agency's construction contract certification.

#### B. CONTRACT FORM

The Agency shall use the Task Order Contract (SE-680), along with the General Conditions to Task Order Contract (SE-685). The contract must be completed in a manner consistent with the requirements outlined herein.

### C. TASK ORDER CONTRACT LIMITATIONS

1. Task Order Contracts are for a term of three (3) years with two (2) automatic one (1) year extensions (unless Agency does not extend). The Agency may shorten this time; however, the maximum time allowed for the contract, with extensions, is five (5) years.
2. The sum of all Task Orders issued under a single TOC (includes all four (4) Contractors) during the five (5) year term of the contract may not exceed \$4,000,000. If the expenditure limit is reached before the five (5) year term limit, or one or more of the Contractors is unable to fulfill its' obligation to the TOC, an Agency must solicit for a new TOC.
3. The minimum award amount of a Task Order is \$90,000. The maximum amount of a Task Order is \$350,000. The total construction cost of a single project performed using multiple Task Orders or Task Orders combined with other types of contracts (not small purchases) may not exceed \$500,000. Projects shall not be divided artificially to avoid these limitations.
4. The Agency shall not amend a contract to extend its termination date beyond five (5) years from the date of execution or above the maximum dollar limits stated above.
5. Before the Agency can initiate an individual project estimated to cost more than the lower limits established for a Permanent Improvement Project in the Policies and Guidance for Establishment and Maintenance of Permanent Improvement Projects, the Agency must submit the project to the Joint Bond Review Committee (JBRC) and State Fiscal Accountability Authority (SFAA) for approval.

### 9.6.2 Selection and Award of Task Order Contract

#### A. SELECTION COMMITTEE

1. To procure a Task Order Contract, the Agency must establish a Selection Committee (Committee). The Committee must be composed of individuals the Agency determines to be qualified to make an informed decision as to the most qualified Contractors. The Committee shall consist of no less than three (3) voting members and the OSE Project Manager as a non-voting advisory member. 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.
2. 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.
  - a. Each member is required to sign an SE-614 stating that they have read and understand those standards of conduct and that they do not have an actual or apparent conflict of interest relating to the proposed acquisition. Other persons involved in the process must also sign an SE-614. For example, if the Agency Head is not a member of the Committee but has final approval of the Committee's decision, they must sign an SE-614. The same is true for members of a Board of Trustees and administrative assistants, etc. that may assist in document preparation and handling.
  - b. If a Committee Member has an actual or apparent conflict of interest related to a proposal under evaluation, the Committee Chair (Chair) must remove that member and, if a sufficient number of voting members do not remain, request the Agency Head replace them with another.
  - c. If a Committee Member has a current or past relationship with an Offeror but does not believe the relationship creates a conflict of interest or is not sure, the member must notify the Chair of the relationship for a determination as to whether an actual conflict of interest exists.
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.

#### B. INVITATION FOR TASK ORDER CONTRACT

1. The Agency must prepare the Invitation for Task Order Contract (SE-655) and include the following information:
  - a. Contract name and number.
  - b. The geographic area to which the contract applies, e.g., a specific campus of the Agency.
  - c. The contract term.
  - d. Maximum dollar value of the services to be procured under the contract.
  - e. Maximum and minimum dollar value of the services to be procured under a single Task Order.
  - f. A description that reasonably describes the licensing classification or subclassification required to perform the work and the general scope, nature, complexity, and purposes of the services to be procured under the contract in a manner that will enable a prospective Offeror to decide whether to submit an offer.

- g. The submission due date; and
  - h. How interested firms may obtain the Contractor's Statement of Qualifications & Questionnaire.
2. Once the Agency is ready to advertise, it must submit the completed SE-655 to OSE for review and approval.
  3. Upon approval, OSE will submit the SE-655 to South Carolina Business Opportunities (SCBO) for advertisement. The Agency may advertise elsewhere but must advertise in SCBO.
- C. CONTRACTORS' LICENSING**
1. At the time of submittal for a TOC, a Contractor must be licensed as required by the SC Contractor's Licensing Board (SCLLR) for the license classification or subclassification of work, and the Group Dollar Limitation covered by the solicitation.
  2. An Agency shall not use a TOC Contractor to broker work that is not covered by the Contractor's license.
  3. The Agency shall verify licensing with SCLLR. OSE will not comment on licensing issues.
- D. CONTRACTOR'S STATEMENT OF QUALIFICATIONS & QUESTIONNAIRE**
1. The Agency must prepare the Contractor's Statement of Qualification & Questionnaire specific to the scope of the Task Order Contract.
  2. The Agency will complete the information requested on page 1, except what is indicated to be completed by the Contractor.
  3. The Contractor will be required to provide the information requested on the first page (as indicated) as well as Parts II, III, and IV.
  4. If there is no "Other Criteria" the Agency intends to use for selection, the Agency will enter "None" in Part III, item G.
  5. 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.
- E. EVALUATION OF STATEMENTS OF QUALIFICATION**
1. Upon receiving the Contractor's Statement of Qualifications & 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.
  2. The Agency will distribute the submittals to all Committee members for their evaluation.
  3. The Committee will convene a meeting for the purpose of evaluating the submittals using the following criteria:
    - a. Past performance/Recent construction projects completed.
    - b. Ability of proposed project personnel.
    - c. Financial information regarding ability to provide required bonding and insurance.
    - d. Location of proposed office in relation to the project area.
    - e. General project experience.
    - f. Experience with state contracts awarded.
    - g. Other criteria included in the solicitation.
  4. Each voting member must complete an evaluation of all submittals using the Selection Committee Member Contractor Evaluation – Task Order Contract (SE-657). If the sum of the scores by a voting member produces a tie between two or more Contractors, the voting member must re-evaluate their rankings to break the ties prior to submitting the SE-657 to the Chair.
  5. After each voting member has completed and submitted their SE-657 to the Chair, the Chair will verify the individual scoring and compile the individual rankings into a committee ranking on the Selection Committee Summary – Task Order Contract (SE-658).
  6. If the Selection Committee Summary compilation of rankings results in more than one firm receiving the same ranking, the Chair shall compare the sums of the raw scores for these firms from the SE-657s of all voting members. The firm with the highest raw score total shall be ranked above the other(s). If there is a tie in the raw score totals, it shall be broken by Committee consensus of which firm(s) is most qualified.

**F. FINAL DETERMINATION AND NOTIFICATION OF AWARD**

1. The Committee's decision on the ranking of each Contractor is final, subject only to the Agency's internal approval process.
2. Once the Agency determines its ranking is final, the Agency must submit a Request for Concurrence in Posting Notice of Intent to Award-TOC (SE-660) to OSE for approval along with the following:
  - a. A copy of signed SE-614 for each Committee Member,
  - b. A copy of all SE-657s and the SE-658, and
  - c. Contractor licenses (from SCLLR website) for the four (4) selected Contractors.
3. After review, OSE will approve the SE-660.
4. With the SE-660 approved, the Agency must send a copy of the Notice of intent to Award – Task order Contract (SE-670) to all firms that responded to the SE-655, post a copy of the SE-670 at the location set forth in the Invitation, and send a copy to OSE.

**G. PROTEST PERIOD AND CONTRACT EXECUTION**

1. The Agency must wait seven (7) business days after posting the SE-670 before it may enter into a contract with each of the four firms. During this time, any Offeror who is aggrieved by the Agency's selection may protest the contract award.
2. If the State Engineer receives such a protest in writing during this period, the Agency may not award a contract until the matter is resolved unless the Agency requests a lifting of the stay in accordance with the provisions of the Procurement Code and the State Engineer grants the request.
3. If the State Engineer does not receive any protests, the Agency may enter into the contracts on the eighth day after posting the SE-670.
4. Once all conditions precedent to executing a contract have occurred, the Agency should submit a completed Task Order Contract (SE-680) and General Conditions to the Task Order Contract (SE-685) to each Contractor with a cover letter requiring the Contractor to execute the contract and return the original to the Agency within seven (7) days.
5. The Contractors shall provide the Agency with a copy of their Certificate(s) of Insurance in the form of the latest edition of the ACORD 25S showing that the Contractor has insurance in place that meets the requirements of the SE-685 within three (3) days after submitting the signed contract.
6. The Agency must assign Task Order numbers to each contract for its record keeping purposes.

**H. NO SUBMITTALS, OR LESS THAN FOUR (4) SUBMITTALS RECEIVED**

1. If no submittals are received, the Agency must close the procurement as follows:
  - a. Submit an SE-660 to OSE with "No Contract to be Awarded" entered as the Intended Awardees and "No Submittals Received" entered under Remarks.
  - b. After OSE approval of the SE-660, post the SE-670 with "No Contract to be Awarded" entered as the Name of Contractors Selected and "No Submittals Received" entered under Remarks.
2. If less than four (4) submittals are received, the Agency must close the procurement as follows:
  - a. Submit an SE-660 to OSE with "No Contract to be Awarded" entered as the Intended Awardees and "Less Than Four (4) Submittals Received" entered under Remarks.
  - b. After OSE approval of the SE-660, post the SE-670 with "No Contract to be Awarded" entered as the Name of Contractors Selected and "Less Than Four (4) Submittals Received" entered under Remarks.

**I. NO CONTRACT TO BE AWARDED**

1. If the Committee determines that none of the Contractors that submitted are qualified to perform the work of the project, or decides for other reasons not to award a contract, the Agency must close the procurement as follows:
  - a. Submit an SE-660 to OSE with "No Contract to be Awarded" entered as the Intended Awardees and indicate the reason under Remarks. Attach a list of all Contractors that submitted for the project.
  - b. After OSE approval of the SE-660, post the SE-670 with "No Contract to be Awarded" entered as the Names of Contractors Selected and indicate the reason under Remarks. Send a copy of the SE-670 to all firms that responded to the Invitation and to OSE the same day it is posted.

### 9.6.3 Task Orders Assigned to the Task Order Contract

#### A. CONSTRUCTION DOCUMENTS (DRAWINGS & PROJECT MANUAL)

1. Most Task Orders will require the issuance of construction documents to clearly define the scope the contractors will be quoting. Drawings and a Project Manual (using the Table of Contents in Appendix D.4) shall be in accordance with Chapter 5, Sections 5.16, 5.17 and 5.18.3 of the Manual.

#### B. OSE REVIEW

1. Unless the work of a Task Order is within the Agency's construction contract certification, the construction documents are to be reviewed and approved by OSE for compliance with applicable building codes and standards before the Task Order is issued.
2. If OSE review and approval of the Task Order is required, the Agency must obtain a non-PIP number from OSE or use an established PIP number.
  - a. The Agency will send OSE a copy of the Task Order construction documents prior to sending them to the TOC Contractors for quoting.
  - b. OSE will review the documents and provide comments, if any, to the Agency, and note if a re-submittal is warranted or if the documents are approved for quoting. Final approval by OSE will be sent via email.
  - c. The Agency shall include a copy of OSE's email approving the construction documents with the fully completed and signed Task Order (SE-690) in the project file.

#### C. SOLICITING AND AWARDED A TASK ORDER

1. To award an individual Task Order, the Agency solicits competitive quotes from all four (4) TOC Contractors. The Agency should remind the Contractors of the dollar limits of the Task Orders before requesting quotes.
2. The Agency must receive at least two (2) responsive, bona fide quotes (Task Order Quote Form – SE-688) in response to its solicitation. If one or more TOC Contractors declines to provide a quote, the Agency must document that fact in the procurement file.
3. The Agency awards the Task Order to the Contractor providing the lowest quote provided the lowest quote is within the Task Order dollar limits.
4. If the lowest quote for a Task Order is below the \$90,000 limit, the Task Order must be withdrawn. The Agency must follow the Small Purchase method found in Chapter 8 to re-quote the project. The TOC Contractors cannot be invited to quote the Small Purchase; however, if the Small Purchase is advertised in SCBO, the Agency may accept a quote from the Task Order Contractors.
5. If a Task Order amount exceeds an Agency's construction contract certification, the Agency will::
  - a. Complete a Building/Construction Permit (SE-580) for approval by OSE.
  - b. Provide a copy of the signed SE-690 and approved SE-580 to the contractor as a notice to proceed.
6. If a Task Order amount is within an Agency's construction contract certification, the Agency shall:
  - a. Complete and sign the SE-690 (except for "Completion Confirmation by Agency").
  - b. Complete and sign the SE-580.
  - c. Provide a copy of the signed SE-690 and SE-580 to the Contractor as a notice to proceed.

#### D. AMENDMENTS TO TASK ORDERS

1. The parties may amend a Task Order provided the amendment does not cause the value of the Task Order or the TOC to exceed the statutory limits outlined in subsection 9.6.1.C.
2. Either the Agency or the Contractor may initiate a request for an amendment to a Task Order using the Task Order Modification (SE-695).

#### E. PERFORMANCE AND PAYMENT BONDS

The Agency must obtain a Performance Bond (SE-355) and Labor & Material Payment Bond (SE-357) in the amount of 100% of a Task Order amount.

**F. COMPLETION OF THE TASK ORDER**

1. If the Task Order amount exceeds an Agency's construction contract certification, the Agency shall:
  - a. Complete the "Completion Confirmation by Agency" portion of the SE-690 and place it in the procurement file.
  - b. Provide a copy of the Certificate of Occupancy/Use Permit (SE-585) for approval by OSE.
2. If the Task Order amount is within an Agency's construction contract certification, the Agency shall:
  - a. Complete the "Completion Confirmation by Agency" portion of the SE-690 and place it in the procurement file.
  - b. Complete the SE-585, sign it, and place it in the procurement file.

**G. COMPLETION OF THE TASK ORDER AFTER THE TOC TERMINATION DATE**

1. Work on individual projects started within the TOC 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 TOC period that it expects to continue past the time limit. Without such notification, OSE will automatically close out the TOC at the end of the contract period.