

**MANUAL FOR  
PLANNING AND EXECUTION OF  
STATE PERMANENT IMPROVEMENTS  
PART II**

**DIVISION OF PROCUREMENT SERVICES  
OFFICE OF STATE ENGINEER**

**2018 EDITION**



**STATE FISCAL  
ACCOUNTABILITY  
AUTHORITY**



**OFFICE OF STATE ENGINEER**  
**MANUAL FOR PLANNING AND EXECUTION OF STATE PERMANENT IMPROVEMENTS**  
**PART II - 2018 EDITION**

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  - A133-2009
  - A201-2007
  - B133-2014
- CM Advisor
  - A132-2009
  - A232-2009
  - B132-2009
  - C132-2009

# CHAPTER 1

## GENERAL INFORMATION

### 1.1 RELATED STATUTORY AUTHORITY

- 1.1.1 SC Code § 2-47-50 requires the State Fiscal Accountability Authority (SFAA) to establish permanent improvement projects prior to an agency taking any action to implement the project or to expend any funds, except for advertising and interviewing for architectural and engineering services.
- 1.1.2 SC Code § 2-47-56 sets approval requirements for gifts-in-kind for architectural and engineering services and construction.
- 1.1.3 SC Code § 6-9-110 exempts state property from local ordinances that require permits, licenses or other devices as means of enforcing building standards.
- 1.1.4 SC Code § 6-9-110 provides for the training and certification of OSE staff as Deputy State Fire Marshals.
- 1.1.5 SC Code § 6-29-770 subjects state agencies, departments, and subdivisions to local zoning ordinances.
- 1.1.6 SC Code § 10-1-180 provides that all construction, improvement, and renovation of state buildings must comply with all applicable Building Code standards as specified in the Manual for Planning and Execution of State Permanent Improvements - Part II.
- 1.1.7 SC Code § 11-35-410 provides that any person may inspect or copy public records after an award, except as exempted by SC Code § 30-4-40. Normally a procurement file is considered a public record,-except for that portion of the submittal which at the time of the submission was marked as confidential.
- 1.1.8 SC Code § 11-35-510 vests all rights, powers, duties, and authority relating to centralization of materials management with the Chief Procurement Officers. This section transfers this authority from all other governmental bodies to the Chief Procurement Officers, regardless of the source of funds. This authority is subject to specific listed exceptions.
- 1.1.9 SC Code § 11-35-540 permits SFAA to promulgate regulations, to approve agencies internal operational procedures for procurement, and to audit and monitor agencies procurement procedures.
- 1.1.10 SC Code § 11-35-710 provides that SFAA may exempt specific purchases from the Procurement Code.
- 1.1.11 SC Code §§ 11-35-810, 820, and 830 create respectively the Office of Materials Management, the Office of Information Technology Management, and the Office of State Engineer.
- 1.1.12 SC Code §§ 11-35-1520, 1530 and 3020 requires that procurements of construction services valued at more than \$50,000 be advertised in “South Carolina Business Opportunities” or a means of central electronic advertising approved by the designated SFAA office.
- 1.1.13 SC Code § 11-35-4210 provides protest rights to certain individuals and permits the Chief Procurement Officer to attempt to resolve protested solicitations and awards.
- 1.1.14 SC Code § 11-35-4220 permits the Chief Procurement Officer to suspend or debar a person or firm from consideration for award of contracts.
- 1.1.15 SC Code § 11-35-4230 permits the Chief Procurement Officer to attempt to resolve contract and breach of contract controversies.
- 1.1.16 SC Code § 11-35-4410 establishes the South Carolina Procurement Review Panel as the final administrative review for all decisions by the Chief Procurement Officers.
- 1.1.17 SC Regulation 19-445.2010 requires that when an Agency receives a written request for procurement information from an actual offeror prior to contract award (after bid opening but before end of protest period), the Agency must make such information (excluding confidential and exempt information), available for inspection within 10 days.
- 1.1.18 SC Regulation 19-445.2015 sets forth the procedure for termination or ratification of unauthorized procurements.
- 1.1.19 SC Regulation 19-446 sets the requirements for persons representing clients in contract disputes and other proceedings before the Chief Procurement Officer for Construction.

### 1.2 ROLE OF THE STATE ENGINEER AND OFFICE OF THE STATE ENGINEER (OSE)

The State Engineer and OSE’s primary role is to assist the Agency to procure design and construction in the manner best suited to the Agency’s needs. The State Engineer is responsible to assure that all such procurements comply with state law. The State Engineer, as the Building Official and Deputy State Fire Marshal for construction of state buildings and facilities, is responsible to assure all such construction provides a safe environment for all occupants. Finally, the State Engineer serves as the administrator of the State-level Floodplain Management Program for State lands.

### 1.3 PURPOSE OF THIS MANUAL

- 1.3.1** The SC Consolidated Procurement Code and other Statutory Provisions require OSE to prepare and maintain the Manual for Planning & Execution of State Permanent Improvements. According to Section 11-35-830, all procurements involving construction and construction-related design services, including any pre- and post-procurement activities in this area, must be conducted in accordance with the Manual for Planning and Execution of State Permanent Improvements, Part II. As provided by SC Regulation 19-445.2145(F), Part II of this manual is the responsibility of the Office of the State Engineer. In his sole discretion, the State Engineer reserves the right to excuse compliance with part or all of this manual (except where it simply restates the law). Any such authority will be in writing and will be provided only in very limited circumstances.
- 1.3.2** While OSE has prepared this manual to comply with the law, OSE hopes agencies will view this manual as an aid in the construction process. This manual, we believe, will provide the Agency with an understanding of the requirements of state procurement law, assistance in procuring design and construction services in compliance with that law, assistance with complying with state law regarding building codes, and assistance with managing their construction projects. The Manual is posted on OSE's Web Site at <http://procurement.sc.gov/manual>.

### 1.4 ORGANIZATION

- 1.4.1** OSE has organized this manual to flow as closely as possible in the order of the construction process; however, the order and title of Chapters is not intended to emphasize one project delivery method over another. As indicated in Chapter 3, the nature of a project will control which project delivery method is best for that project.
- 1.4.2** Each chapter provides assistance with various stages of the construction project. At the back of the Manual is a glossary of terms used throughout the Manual and appendices providing additional information such as contracts and forms referenced in the Manual.

### 1.5 KEY DEFINITIONS

- 1.5.1** "Construction" is the process of building, altering, repairing, remodeling, improving, or demolishing any structure, building, or other improvements of any kind on any public real property. It does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property. SC Code § 11-35-310(7)
- 1.5.2** "Agency" is the "Governmental Body" procuring design or construction.
- 1.5.3** "Governmental Body" is a state government department, commission, council, board, bureau, committee, institution, public college, university, technical school, Agency, government corporation, or other establishment or official of the executive or judicial branch. SC Code § 11-35-310(18)

### 1.6 AGENCY RESPONSIBILITIES

- 1.6.1** Each Agency is responsible for its construction contracting program.
- A. The Agency must determine the need for design or construction services;
  - B. The Agency must secure project funding; and
  - C. The Agency must comply with State and Federal laws, regulations, and procedures in procuring and administering construction.
- 1.6.2 Service Level Agreements**
- A. With every PIP established that exceeds \$5,000,000, the Agency must complete and sign a Service Level Agreement (SLA) for the appropriate method of project delivery with the OSE Project Manager assigned to that project.
  - B. The purpose of this SLA is to establish milestones and deliverables for each anticipated activity in the project development and procurement process for the state project.
  - C. Both Parties agree to abide by the scheduled timeframe. If the timeframe is not adhered to, then a new schedule must be mutually agreed upon and implemented.
  - D. If the agency fails to meet timeframes set, the job may be delayed as it will have to be rescheduled according to the OSE Project Manager's available time.
  - E. SLA's for all construction delivery methods can be found in Appendix F of this manual.

## 1.7 GENERAL PROCUREMENT INFORMATION

### 1.7.1 Chief Procurement Officers – Authority and Delegation of Authority

- A. South Carolina Law establishes three Chief Procurement Officers, the State Engineer (SE), the Materials Management Officer (MMO), and the Information Technology Management Officer (ITMO). Collectively, the Chief Procurement Officers have the authority and responsibility for all state procurement. The only exceptions are when the General Assembly or SFAA exempts or otherwise transfers specific authority to others. Procurement responsibilities of the Chief Procurement Officers are as follows:

<u>CATEGORY</u>	<u>SE</u>	<u>MMO</u>	<u>ITMO</u>
1. Construction-Related Professional Services	X		
2. Construction, over Agency Certification	X		
3. Repair, \$50,000 or greater and over Agency Certification		X	
4. Maintenance, over Agency Certification		X	
5. Operation, over Agency Certification		X	
6. Goods and Services, over Agency Certification		X	
7. Data Processing, over Agency Certification			X
8. Telecommunications, over Agency Certification			X
9. Office System Technology, over Agency Certification			X
10. Information Technology Services, over Agency Certification			X

- B. Each Agency has the authority to conduct construction procurements up to and including \$50,000. Such procurements are subject to the requirements of the Procurement Code and applicable requirements of this manual. SFAA may grant an Agency a higher construction certification limit as discussed in Chapter 3.
- C. Upon the recommendation of the designated SFAA office, SFAA may exempt governmental bodies from purchasing certain items through the respective chief procurement officer's area of responsibility. Audit and Certification maintains current listings of all exemptions and certifications, which are available through the Division of Procurement Services (DPS) website (<https://procurement.sc.gov/agency/audits/cert-limits>) or by contacting Audit and Certification.

### 1.7.2 Advertising of Design and Construction Procurements

- A. Chapters 4 and 6 of this manual describe the minimum requirements for advertising procurements for professional services and construction. The Agency must publish all advertisements required by this manual in South Carolina Business Opportunities (SCBO). The Division of Procurement Services publishes SCBO. To improve competition, Agencies may also advertise in other media, but such advertisements are not legal advertisements that meet the public notice requirements of the Procurement Code.
- B. SCBO is available on the Division of Procurement Services website (<https://procurement.sc.gov/general/scbo>). SCBO is published daily Monday – Friday and new advertisements are posted at 12:01 a.m. on the day of publication. Projects advertised in SCBO will remain online from the date of posting until the bid date or the submittal deadline. For projects required to be approved by OSE, the submittal schedule is:

<u>Completed Forms Received by OSE for Review By:</u>	<u>Are Posted to SCBO:</u>
9:00 a.m. on any day, Monday - Friday	By 12:01 a.m. the following business day.
<b>EXAMPLE:</b> Forms received by OSE no later than 9:00 a.m. on Tuesday will be published at 12:01 a.m. Wednesday; or, forms received by OSE no later than 9:00 a.m. on Friday will be published by 12:01 a.m. on Monday.	

**NOTE:** All forms used to advertise in SCBO must be submitted to OSE in **MS Word** format.

### 1.7.3 Permanent Improvement Project

- A. For the definition of a Permanent Improvement Project (PIP), Agencies should consult the Manual for Planning and Execution of State Permanent Improvements - Part I (Manual Part I). The Agency may find the Manual Part I at <http://www.admin.sc.gov/budget/capital-budgeting-unit/manual> or by contacting the Capital Budgeting Unit in the Executive Budget Office of the Department of Administration. The Manual Part I defines the process for establishing a PIP. SFAA documents its approval of a PIP on a Form A-1. Form A-1 is available in Appendix A to the Manual Part I, at [https://www.admin.sc.gov/files/A-1%20New%20Projects%20-%20March%202016\\_0.pdf](https://www.admin.sc.gov/files/A-1%20New%20Projects%20-%20March%202016_0.pdf), or from the Capital Budgeting Unit. Agencies should direct questions on procedures related to the PIP process to the Capital Budgeting Unit.
- B. An Agency may not implement a PIP until SFAA has approved a Form A-1. However, if the Agency expects a project to result in a PIP, the Agency may advertise (using a temporary project number assigned by OSE) and interview for architectural and engineering (A/E) services and negotiate a proposed contract before SFAA approval of a Form A-1. The Agency may not award a contract for A/E services on a PIP and the A/E may not perform any work until SFAA approves a Form A-1.

### 1.7.4 Non-Permanent Improvement Project

A Non-Permanent Improvement Project (Non-PIP) is a construction project that does not meet the definition of a PIP as contained in the Manual Part I. If an Agency begins a construction project that does not meet the PIP definition, but it subsequently qualifies as a PIP, the Agency must seek to establish the project as a PIP by submitting a Form A-1 to the Capital Budgeting Unit as soon as they know that the project qualifies as a PIP. OSE cannot approve any subsequent forms related to the project until the PIP has been established.

### 1.7.5 Project Numbering

- A. OSE gives each project under its jurisdiction a unique project number. The Agency needs to assure that this number appears on all documents and correspondence associated with the project. OSE's project number format is as follows:

1. Permanent Improvement Project Number (PIP)

<b>H59</b>	<b>9659</b>	<b>PD</b>	<b>B1</b>
Agency Number	PIP Number (assigned by Capital Budgeting)	OSE PM (assigned by OSE)	Project Phase (optional)

2. Non-Permanent Improvement Project Number (Non-PIP)

<b>H12</b>	<b>N046</b>	<b>MJ</b>	<b>C</b>
Agency Number	Non-PIP Number (assigned by OSE)	OSE PM (assigned by OSE)	Project Phase (optional)

3. Indefinite Delivery Contract Project Number (IDC)

<b>H75</b>	<b>D015</b>	<b>SG</b>	<b>A</b>
Agency Number	IDC Number (assigned by OSE)	OSE PM (assigned by OSE)	Multiple Contract Award Identification (if needed)

**NOTE:** When an IDC project is using the Low Bid of a Representative Project method for selecting the IDC contractors, the representative project plans and specifications shall include both the IDC project number (as shown above) and the Delivery Order project number through which the representative project is intended to be awarded (PIP or Non-PIP). The IDC number above is only to be used in referencing the selection of the A/E or Contractor and not to be used specifically as the project number of the representative project or other Delivery Orders.

- B. OSE uses Project Phases (up to two alphanumeric characters) to identify smaller elements of a large project when an Agency plans to award separate design and/or construction contracts for those smaller elements. (Note: If a PIP that exceeds the Agency construction certification is split into smaller projects, each smaller project must be submitted to OSE for review and approval.)

### 1.7.6 Types of Construction Procurements

The Procurement Code allows the following methods of construction procurement:

- A. Qualification based selection of architect-engineer and land surveying services – Chapter 4 of this manual.
- B. Competitive Sealed Bidding - Chapter 6 of this manual;
- C. Competitive Sealed Proposals - Chapter 11 or 12 (depending on project delivery method) of this manual;
- D. Small Procurements – Chapter 8 of this manual.
- E. Emergency Procurements – Chapter 8 of this manual.
- F. Sole Source Procurements – Chapter 8 of this manual.

### 1.7.7 Types of Project Delivery Methods

- A. Design-Bid-Build – SC Code § 11-35-2910(6) & Chapter 6 of this manual.
- B. Construction Management at Risk - SC Code § 11-35-2910(5) & Chapter 11 of this manual.
- C. Design-Build - SC Code § 11-35-2910(7) & Chapter 12 of this manual.
- D. Design-Build-Operate-Maintain – SC Code § 11-35-2910(9) & Chapter 12 of this manual.
- E. Design-Build-Finance-Operate-Maintain – SC Code § 11-35-2910(8) & Chapter 12 of this manual.
- F. Operations and Maintenance - SC Code § 11-35-2910(13).

## 1.8 UNAUTHORIZED PROCUREMENTS

- 1.8.1 SFAA may prescribe administrative penalties for violations of the Procurement Code and Regulations. SFAA may revoke or reduce procurement authority for violation of these provisions.
- 1.8.2 Agencies must terminate contracts for procurements made in violation of the Procurement Code unless an authorized individual determines in writing that the contract is in the best interest of the state. See SC Regulation 19-455.2015 for details on terminating or ratifying such procurements.

## 1.9 RELATIONSHIP BETWEEN LOCAL OFFICIALS AND STATE AGENCIES

### 1.9.1 Local Ordinances and Regulations

Local ordinances or regulations that require the purchase or acquisition of a permit utilized to enforce building codes and standards do not apply to state construction projects. The State Engineer determines the enforcement and interpretation of all applicable building codes and standards on state buildings. Local officials may comment on the application of building codes to state buildings through the State Engineer but may not delay construction or delay or deny water, sewer, power or other utilities, or firefighting services.

### 1.9.2 State Fire Marshal

Certified Personnel of OSE and deputy state fire marshals (including resident state fire marshals) have exclusive jurisdiction over state buildings in the exercise of the State Fire Marshal's powers and jurisdictional authority.

### 1.9.3 Local Zoning Ordinances

State agencies are subject to local zoning ordinances. However, local zoning ordinances do not apply to homes serving nine or fewer mentally or physically handicapped persons provided they provide care on a twenty-four hour basis and provides a binding procedure for working with local government authorities to select a site for such homes.

## 1.10 FREEDOM OF INFORMATION ACT AND TRADE SECRETS ACT

The following generally describes some of the applicable requirements of the Freedom of Information Act (FOIA), but is not a complete review of the requirements of either FOIA or the Trade Secrets Act.

- 1.10.1 Each Agency is responsible for its compliance with the FOIA and the South Carolina Trade Secrets Act. Each Agency is also responsible for the development and enforcement of internal policies and procedures to ensure compliance.
- 1.10.2 Except as exempted by §30-4-40, any person may inspect or copy public records after an award. The following specifically applies to procurements:
  - A. Normally, a public procurement file is a public record subject to public viewing.
  - B. Until the Agency posts a Notice of Intent to Award, only the information disclosed by the Agency's procurement officer or his designee at the opening of sealed bids is public information.



- C. In the case of professional services procurements, the following becomes public information at the time the Agency posts a Notification of Selection for Contract Negotiation:
    - 1. Information related to the Agency's determination of the firms selected for final interview.
    - 2. Information related to the Agency's determination of the final ranking of the interviewed firms.
  - D. Material not marked as confidential at the time of submittal is public information.
  - E. Information relative to the identity of the maker of a gift to a public body must not be disclosed when the maker specifies, as a condition of the gift, that the public body not reveal their identity.
  - F. The public body must separate records containing information that is exempt from disclosure before making the remaining information available to the public.
- 1.10.3** If an actual offeror makes a written request for procurement information prior to the execution of a contract, the Agency must make documents directly related to the procurement activity that are not exempted available for inspection within 10 days of receiving the request. (SC Regulation 19 445.2010) In all other cases, if a person makes a written FOIA request to the Agency, the Agency must provide that person written notification as to public availability of the records within 15 days (excluding Saturday, Sundays and legal holidays) of receiving the request.
- 1.10.4** Any person that violates the provisions of FOIA is guilty of a misdemeanor and subject to the penalties listed in SC Code §30-4-110.

## **1.11 LEGAL REMEDIES FOR SOLICITATIONS AND AWARDS**

When an agency solicits a bid or proposal in excess of \$50,000 or awards a contract in excess of \$50,000, the procurement code provides aggrieved persons who have standing the right to protest.

### **1.11.1 Protesting a Contract Solicitation**

#### **A. Who can protest?**

Any prospective bidder, offeror, contractor, or subcontractor may protest a contract solicitation.

#### **B. What is the deadline for protesting?**

Protestant must protest within fifteen days of the date of the Invitation for Bids, Request for Proposal, Solicitation, or Amendment, if the amendment is at issue. The State Engineer must receive the protest by 5 PM of the fifteenth day. If the fifteenth day falls on a weekend or a holiday, the State Engineer must receive the protest by 5 PM of the next business day.

#### **C. How does someone submit a protest?**

A protestant must submit a written protest to the State Engineer. Protestor may submit a protest by letter, facsimile, or e-mail.

Mailing Address: State Engineer  
1201 Main Street Suite 600  
Columbia, SC 29201

Facsimile No.: 803-737-0639

E-mail Address: [protest-ose@mmo.sc.gov](mailto:protest-ose@mmo.sc.gov)

#### **D. What information should the protestant provide in the written protest?**

The protestor must:

1. Set forth the specific nature of the controversy;
2. Set forth the specific relief requested; and
3. Provide sufficient details for the State Engineer and any other interested party to have notice of every issue the protestor wants the State Engineer to decide.

### **1.11.2 Protesting a Contract Award:**

#### **A. Who can protest?**

Any actual bidder, offeror, contractor, or subcontractor may protest a contract award. Definitions of the words "contractor" and "subcontractor" are located at SC Code Ann § 11-35-310.

#### **B. What is the deadline for protesting?**

Protestant must protest within ten days of the date of posting of the Notice of Intent Award. The State Engineer must receive the protest by 5 PM of the tenth day. If the tenth day falls on a weekend or a holiday, the State Engineer must receive the protest by 5 PM of the next business day. The protestant may amend his/her protest at any time before 5 PM of the fifteenth day after the posting of the Notice of Intent to Award.



**C. How does someone submit a protest?**

See 1.11.1.C above.

**D. What information should the protestant provide in the written protest?**

See 1.11.1.D above.

**1.11.3 Resolution Process for Protests**

- A. The Agency must first attempt to resolve all protests by mediation and a mutual written agreement between the aggrieved parties. The OSE Project Managers are available to assist.
- B. If the efforts at mediation fail to resolve the protest, the State Engineer will conduct an administrative review of the issues raised by the protestant and issue a written decision. The administrative review process may include a formal hearing. More information on the administrative review process is available through the Division of Procurement Services legal counsel's website (<http://procurement.sc.gov/legal/general-info>).
- C. Unless a person adversely affected by the State Engineer's decision files an appeal with the Procurement Review Panel, the Agency may award the contract on the eleventh day after the State Engineer posts his decision.

**1.11.4 Appeals to the Procurement Review Panel**

- A. Any person adversely affected by the decision of the State Engineer may appeal that decision to the South Carolina Procurement Review Panel (Panel) within 10 days from the posting of the decision.
- B. The appellant should address the appeal to the State Engineer as set forth above. The appellant must submit with their appeal a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel.
- C. In order to prosecute an appeal before the Panel, the appellant must retain an attorney.

**1.11.5 Stay of Procurement During Protests**

When a prospective bidder or offeror protests a solicitation to the State Engineer, the Agency may not proceed with the procurement or enter into a contract until the protest is resolved; EXCEPT, the State Engineer, upon written request by the head of the Agency, may determine in writing that it is necessary, and in the best interest of the State, to allow the contract award process to continue pending resolution of the protest.

**1.12 LEGAL REMEDIES FOR CONTRACT CONTROVERSIES****1.12.1 General**

- A. In the event of a contract dispute between the Agency and one of its contractors or subcontractors, the Agency must first attempt to resolve the dispute without resort to further action. The OSE Project Managers are available to assist the Agency in resolving any dispute.
- B. If the parties cannot resolve their dispute, either party may file a request for resolution of the dispute with the State Engineer. A party cannot seek redress in the courts without going through the following resolution process.

**1.12.2 Filing a Request for Resolution of a Dispute or Controversy (Request for Resolution)****A. Who can file a request for resolution?**

The contracting Agency, contractor, or a subcontractor, when the subcontractor is the real party in interest, may file a written Request for Resolution of a contract controversy with the State Engineer. For the purposes of resolving contract controversies, the terms "contractor" and "subcontractor" include prime design professionals and their first tier consultants.

**B. What is the deadline for filing a request for resolution?**

The requesting party must file their request within one year of the date the contractor last performed work under the contract, unless the basis for the claim is a latent defect. In the case of claims for latent defects, the requesting party must file their request within three years of the date the requesting party knew or should have known of the defect that is the basis for the claim.

**C. How does someone file a request for resolution?**

The party filing must submit a written request for resolution to the State Engineer. The party may submit the request by letter, facsimile, or e-mail

Mailing Address: State Engineer  
1201 Main Street Suite 600  
Columbia, SC 29201

Facsimile No.: 803-737-0639

E-mail Address: [protest-ose@mmo.sc.gov](mailto:protest-ose@mmo.sc.gov)

**D. What information should the party filing a request for resolution include in the request?**

The protestor must:

1. Set forth the specific nature of the controversy;
2. Set forth the specific relief requested; and
3. Provide sufficient details for the State Engineer and any other interested party to have notice of every issue the protestor wants the State Engineer to decide.

**1.12.3 Resolution Process for Contract Controversy**

- A. Formal mediation is the first step in the process of resolution of a contract controversy. An OSE Project Manager or other mutually agreeable party appointed by the State Engineer will act as the mediator. The parties involved in the controversy must participate in the mediation process.
- B. In the event mediation fails to resolve all the issues in the contract controversy, the State Engineer will conduct an administrative review of the issues raised by the claimant and issue a written decision. The administrative review process may include a formal hearing where the parties have the opportunity to present evidence and testimony, cross-examine witnesses, and submit arguments to support their position. Legal representation is not required for a hearing before the State Engineer.
- C. Each party must supply all proposed exhibits and related information at the administrative hearing along with sufficient copies for all other parties. The State Engineer may direct the parties to exchange exhibit information and witness lists before the hearing.
- D. Each party must furnish sufficient evidence and witnesses to substantiate its claim. Unsupported testimony from the claimant is not sufficient to establish the amount of an award for a requested claim. If the respondent believes the value of a claim is unreasonable, then respondent must present evidence or witnesses to substantiate a different value for the claim.

**1.12.4 Appeals to the Procurement Review Panel**

- A. Any person adversely affected by the decision of the State Engineer may appeal that decision to the South Carolina Procurement Review Panel (Panel) within 10 days from the posting of the decision.
- B. The appellant should address the appeal to the State Engineer as set forth above. The appellant must submit with their appeal a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel.
- C. In order to prosecute an appeal before the Panel, the appellant must retain an attorney.

## CHAPTER 2

### MINORITY BUSINESSES

#### 2.1 RELATED STATUTORY AUTHORITY

- 2.1.1 SC Code § 11-35-5210 sets forth the General Assembly's intention to assist minority businesses.
- 2.1.2 SC Code § 11-35-5240 requires each agency to develop an MBE Utilization Plan to emphasize the use of minority businesses and to submit quarterly and annual reports on the plan and its implementation.
- 2.1.3 SC Code § 11-35-5250 permits the Chief Procurement Officer to make special provisions for progress payments, letters of credit, and letters of contract award to assist minority businesses in obtaining appropriate credit and otherwise carry out the terms of a state contract.
- 2.1.4 SC Code § 11-35-5270 establishes the Division of Small and Minority Business Contracting and Certification (SMBCC) within the Department of Administration to identify and assist responsive minority businesses.
- 2.1.5 SC Code § 12-6-3350 provides for a tax credit for contractors who subcontract with certified South Carolina based small minority businesses.
- 2.1.6 SC Regulation 19-455.2160(A) provides definitions for the terms Minority Person, Socially Disadvantaged Individuals, Economically Disadvantaged and Socially and Economically Disadvantaged Small Business.
- 2.1.7 SC Regulation 19-445.2160 requires each agency to maintain records and submit reports to the SMBCC and SFAA demonstrating implementation of the MBE Utilization Plan.

#### 2.2 STATE POLICY

The South Carolina General Assembly has declared that business firms owned and operated by minority persons have been historically restricted from full participation in the free enterprise system to a degree disproportionate to other businesses. The General Assembly has further declared that it is in the State's best interest to assist minority-owned businesses to develop fully as a part of the State's policies and programs designed to promote balanced economic and community growth throughout the State. Therefore, it is the State's policy to ensure that agencies afford those businesses owned and operated by minorities the opportunity to fully participate in the overall procurement process of the State.

#### 2.3 MINORITY BUSINESS ENTERPRISE (MBE) UTILIZATION PLAN

- 2.3.1 Each Agency procuring construction must have a MBE Utilization Plan. The plan must include the following:
  - A. A policy statement expressing the client's commitment to use minority businesses in all aspects of procurement;
  - B. The name of the client's minority business liaison officer (must be a directorate staff level employee);
  - C. A description of liaison officer's duties including the responsibility to:
    - 1. Develop, manage, and implement the MBE plan on a day-to-day basis;
    - 2. Outline procedures to be used when it is determined feasible to divide larger projects into smaller tasks to allow MBE participation;
    - 3. Develop instructions to prime contractors requiring them to address the use of certified minority business subcontractors;
    - 4. Establish and maintain a directory of certified minority businesses that wish to do business with the State;
    - 5. Disseminate information on available business opportunities to provide minority businesses equal opportunity to compete for professional services and construction contracts;
    - 6. Maintain reference files of federal and state organizations that provide assistance to minority business organizations and make files available to minority businesses;
    - 7. Establish and maintain records on the number of bid invitations and RFP's sent to and directed toward certified minority businesses, answers received, and contracts awarded when applicable to the Agency's dollar procurement limit; and
    - 8. Maintain records and submit progress reports to the Division of Small and Minority Business Contracting and Certification (SMBCC).

- 2.3.2** In the development of MBE utilization plans, agencies must ascertain the total controllable procurement dollars budgeted for that particular fiscal year. Controllable procurement dollars include, but are not limited to, those anticipated expenditures for services, supplies, equipment, or construction that are not:
- A.** Currently under contract for the present fiscal year;
  - B.** Covered by mandatory term contract;
  - C.** Defined as sole source acquisitions;
  - D.** Obligated to be awarded to the lowest responsive and responsible source;
  - E.** Obligated for repayment of time-pay, lease-purchase equipment, or real property; or
  - F.** Required by statute to be expended with a governmental body.
- 2.3.3** Once determined, the Agency must establish realistic goals, including a reasonable percentage, for procurements directed toward certified minority businesses.

## **2.4 CERTIFICATION OF MINORITY BUSINESSES**

- 2.4.1** The SMBCC can certify a business as a minority business. SMBCC will also certify the maximum dollar limit for which the business is eligible to contract. See SC Regulation 19-455.2160(B) through (E) for details on the certification process.
- 2.4.2** A minority business may contact SMBCC at the following address for the application procedure:
- SC Division of Small and Minority Business Contracting and Certification  
1205 Pendleton Street, Suite 453-C  
Phone: (803) 734-0507  
Columbia, SC 29201  
Fax: (803) 734-4061
- 2.4.3** The SMBCC maintains a list of certified minority businesses providing construction and construction related professional services. The list is available to all agencies.

## **2.5 CONTRACTING WITH CERTIFIED MINORITY BUSINESSES**

- 2.5.1 Professional Services:** The Agency must procure all professional services in accordance with Chapter 4. Contracts for construction related professional services with fees \$25,000 or less may be directly negotiated with a certified minority business. An Agency may direct a contract for construction related professional services with fees exceeding \$25,000 towards certified minority businesses. The Agency must include the following statement in the advertisement: "This is a designated contract directed towards certified South Carolina based minority firms to satisfy the minority business enterprise goal of the Agency. However, this does not prevent other firms from submitting resumes for consideration."
- 2.5.2 Construction:**
- A.** An Agency may direct an entire construction contract towards certified minority businesses. The Agency must procure the contract in accordance with the requirements of the Procurement Code and this manual. If the procurement requires advertisement, then the Agency must include the following statement in the advertisement: "This is a designated contract directed towards certified South Carolina based minority firms to satisfy the MINORITY BUSINESS goal of the Agency. However, this does not prevent other firms from bidding on this project."
  - B.** An Agency may direct all bidders to address the use of certified minority businesses as subcontractors. The Agency should provide specific instructions in the bid documents and the advertisement on how to comply with the requirement. The Agency may declare a bid non-responsive for failure to address the use of minority business subcontractors as instructed.

## **2.6 BONDING OF SMALL AND MINORITY BUSINESS ENTERPRISES**

The State requires bid, payment, and performance bonds on all construction projects in excess of \$50,000. The State does not require bid bonds on projects of \$50,000 or less. Agencies may choose to forgo payment and performance bonds on projects of \$50,000 or less provided they have taken steps to protect the interests of the State by other means.

**2.7 SBA SURETY BOND GUARANTEE PROGRAM**

The Small Business Administration's Surety Bond Guarantee Program provides guarantees on bonds up to a maximum of \$2 million for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. The SBA program guarantees from 70 percent to 90 percent of losses incurred by surety companies, in the event of a contractor's default, on contracts not exceeding \$2 million. More information on this program is available from SBA Office of Surety Guarantee's Web site (<http://www.sba.gov/surety-bonds>) or from any SBA office.

**2.8 INCOME TAX CREDIT**

A contractor who awards a subcontract to a certified South Carolina-based minority business is eligible for a credit of 4% of payments made to the minority subcontractor up to \$50,000 annually or the amount of the tax liability, whichever is less. A contractor is eligible for the income tax credit for 10 taxable years beginning with the taxable year in which the contractor first claims the credit. Contractors should contact the Department of Revenue for the latest information on the extent of this credit. <http://dor.sc.gov/about/tax-credits>

**2.9 PROGRESS PAYMENTS FOR CONSTRUCTION RELATED SERVICES**

An Agency may provide for progress payments in its construction contracts. If an Agency does so, it must also provide for retaining a certain percentage of the contractor's proceeds until project completion; however, the Agency cannot retain more than 3-1/2%. If the minority business requests a release of the retainage in a progress payment and the Agency determines that the business is achieving satisfactory progress, the Agency may authorize payment of the retainage in addition to the progress payment.

**2.10 LETTERS OF CONTRACT AWARD**

If, after receiving an award for a state contract, a minority business requests a letter of contract award, the State Engineer or the Agency's procurement officer must furnish a letter stating the dollar value, duration, payment schedule, and other information concerning the contract to the minority business.

**2.11 REQUIRMENTS OF STANDARD FORM CONTRACTS**

To assist the Agency in meeting its MBE utilization goals, each standard form contract that includes construction services includes an MBE reporting requirement. This reporting requirement requires the contractor to provide the Agency with a report listing every MBE (whether certified by the state or not) with which it contracts to provide labor, material, or equipment to the project and to provide the name of the certifying entity, i.e. state, or federal government.

## 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 for pre-qualification on state construction.
- 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 particular 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 of this manual.

**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
- B. Construction Management at-Risk (CM-R) also known as CM/Constructor (CM/C);
- C. Operations and Maintenance;
- D. Design-Build (DB);
- 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	No	Yes	Yes
Cost of Work a Selection Criteria	Yes	Yes	No	Yes	No
Total Construction Cost Sole Selection Criteria	Yes	No	No	No	No
↓	↓	↓	↓	↓	↓
Common Names Used	Design-Bid-Build - Competitive Sealed Bids	CM-R/ CM Constructor – Competitive Cost Proposal	CM-R/CM Constructor – Competitive Qualifications Proposal <b>(Note:</b> Agency must have strong written justification for approval to make Selection that does not consider fee as a factor.)	Design-Build – Competitive Cost Proposal	Design-Build – Competitive Qualifications Proposal <b>(Note:</b> Code places severe limitations on selection that does not consider price as a factor)
↓	↓	↓	↓	↓	↓
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 determination for 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. 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 are 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, DBs, 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)?
- C. 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 on Project Delivery Method Determination – Design-Bid-Build (SE-300) and placed in the procurement file. The Agency’s recommendation is automatically approved by the Office of State Engineer.



- D. 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. DB or a permutation of DB).

#### 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
  - 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. 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 (DB) – 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 above);
  - 3. Describe any additional procurement procedures (See Section 3.5 for allowed additional procedures);
  - 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 above 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 SELECTING ADDITIONAL PROCUREMENT PROCEDURES

**3.5.1** After, or in conjunction with, selecting the project delivery and source selection method, the Agency should determine if it wants to use additional construction procurement procedures permitted by the Procurement Code. These procedures include pre-qualification of contractors and subcontractors, short listing of offerors, and stipends.

#### 3.5.2 Approval to Pre-Qualify Bidders/Offerors and Sub-Bidders/Offerors

- A. Agencies may request approval from OSE to limit participation in a solicitation for construction to those businesses, including potential subcontractors that are prequalified.
- B. The Agency may submit its written request to OSE for approval of pre-qualification as a part of the written determination of project delivery method discussed above.
- C. The request must include a description of the general scope of work to be acquired, the deadline for submission of information, and how businesses may apply for consideration.
- D. If OSE approves pre-qualification of bidders/offerors, OSE must supervise the pre-qualification process.
- E. If the selected project delivery method is Design-Bid-Build, the Agency must demonstrate that the construction will exceed \$10 million or that the project is so unique in nature or involves such special circumstances that pre-qualification is necessary or otherwise warranted. For DB, DBOM, and DBFOM projects, the Agency must show that cost of preparing proposals is sufficiently high in view of the size, estimated price, and complexity of the procurement as to justify pre-qualifying offerors.
- F. The Procurement Code does not specifically discuss pre-qualifying offerors for CM-R services; however, applying the standards for justifying pre-qualification of bidders/offerors for DB or Design-Bid-Build services provides a reasonable framework for justifying pre-qualification of CM-R offerors.
- G. Pre-qualification for Design-Bid-Build and DB have significant differences regarding the limits an Agency may place on the number of businesses it pre-qualifies. In the context of Design-Bid-Build, the Agency may not use pre-qualification to exclude otherwise qualified (responsible) firms from competition by limiting competition to a predetermined number of the highest ranked offerors. The Agency must solicit proposals from all businesses that meet the published minimum requirements.
- H. In the context of DB, pre-qualifying offerors is essentially a method of short listing. Using only the criteria set forth in the request for qualifications, the Agency ranks each business from most qualified to least qualified. The basis of the ranking is determined in writing. The Agency then selects a predetermined number of the highest ranked businesses from which it will solicit proposals. OSE recommends the Agency select a minimum of three businesses. If fewer than two businesses are pre-qualified, the Agency must cancel the pre-qualification process. The determination regarding how many offers to solicit is not protestable.
- I. In determining whether or not to pre-qualify bidders and/or sub-bidders, the Agency must keep in mind that certain decisions made in the prequalification process are protestable. For instance, on a Design-Bid-Build project, the determination that a particular contractor is not qualified is protestable on the grounds that the Agency's decision is "clearly erroneous, arbitrary, capricious, or contrary to law". On a DB project, the determination that one offer is more highly qualified than another is protestable on the same grounds.
- J. The actual process of pre-qualifying offerors is addressed in Chapter 11 or 12 (depending on the selected project delivery method) of this manual and the Pre-Qualification Handbook.

#### 3.5.3 Additional Procedures Applicable to Design-Build, Design-Build-Operate-Maintain or Design-Build-Finance-Operate-Maintain

- A. If the Agency determines the cost of preparing proposals is high in view of the size, estimated price, and complexity of the project, the Agency may:
  1. pre-qualify offerors as discussed above,
  2. short list responsible offerors in accordance with provisions set forth in this manual, or,
  3. pay stipends to unsuccessful offerors.

- B. The decision to use these alternative procedures should be made at the time the Agency prepares its written determination of appropriate project delivery method.
- C. If the Agency determines it is appropriate to use one of the additional procedures, it should state so in the written determination of appropriate project delivery method and set forth the factors supporting its use.
- D. Short listing differs from pre-qualification in that it occurs after receipt of proposals rather than before. Under this process, the Agency would receive proposals from any interested business and short list a predetermined number of responsible offerors reasonably susceptible of being selected prior to any discussions.
- E. Stipends are intended to stimulate interest in a project among potential offerors by notifying them that the Agency will partially compensate unsuccessful offeror's for the significant cost of preparing a proposal.

### 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 $\leq$ \$50,000	None	Performance Security $\leq$ 100% contract price & Payment Security $\leq$ 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	May require security for pre-construction phase work.
DB	Design-Builder	Performance Security = 100% of contract price & Payment Security = 100% of contract price (Contract Price includes design costs)	N/A
DBOM	Design-Build-Operator	Performance Security = 100% of contract price less cost of operations and maintenance & Payment Security = 100% of contract price less cost of operations and maintenance.	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-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.	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.

<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.

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 Once OSE has approved the selected project delivery method, the agency is ready to proceed with the next step, if the project is sufficiently large, in establishing a PIP by obtaining a Phase 1 approval from the JBRC.
- 3.7.2 The procedure for determining if a project needs to be established as a PIP and initiating a PIP is set forth in Chapter 2 through 5 of the Manual for Planning and Execution of State Permanent Improvements, Part I.
- 3.7.3 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 DB, 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.

## CHAPTER 4

### PROCURING PROFESSIONAL SERVICES INDEPENDENT OF CONSTRUCTION SERVICES

#### 4.1 RELATED STATUTORY AUTHORITY

- 4.1.1** SC Code §§ 8-13-700 through 8-13-795 of the Ethics, Government Accountability and Campaign Reform Act of 1991 establishes the Rules of Ethical Conduct for public employees.
- 4.1.2** SC Code § 11-35-2910 defines architect-engineer and land surveying services
- 4.1.3** SC Code § 11-35-3210 requires that architect-engineer, construction management agent, and land surveying services be procured as provided in § 11-35-3220 except as authorized by §§ 11-35-1560 (Sole Source), 11-35-1570 (Emergency) and 11-35-3230 (Small Professional Services Contract).
- 4.1.4** SC Code § 11-35-3215 provides for a preference for resident design services when qualifications appear to be equal. A business responding to an invitation for design services must submit a certification with its response stating whether it is a South Carolina resident. Submission of a false certification is grounds for suspension or debarment.
- 4.1.5** SC Code § 11-35-3220 outlines the qualification base selection procedures including the criteria that shall be used by the Agency Selection Committee to evaluate the interviewed firms.
- 4.1.6** SC Code § 11-35-3230(4) prohibits breaking projects into small projects for the purpose of circumventing the provisions of § 11-35-3220.
- 4.1.7** SC Code § 11-35-3245 prohibits architects or engineers who perform design work on a project under a contract awarded pursuant to § 11-35-3220 or § 11-35-3230 from also performing construction work on that project.
- 4.1.8** SC Code § 11-35-3310 allows indefinite delivery contracts to be awarded on an as-needed basis for construction related professional services pursuant to procurement procedures set forth in §§ 11-35-3220 and 11-35-3230.
- 4.1.9** SC Code § 11-35-4210 provides information to protest a solicitation or an award. See Chapter 1 for details on the protest process including lifting the stay on further action.

#### 4.2 DEFINITIONS

##### 4.2.1 Architect-Engineering and Land Surveying Services

Those professional services associated with the practice of architecture, engineering, land surveying, landscape architecture, and interior design pertaining to construction. Such services include incidental services that members of these professions and their employees may logically or justifiably perform, including studies, investigations, evaluations, consultations, etc.

##### 4.2.2 Construction Manager Agent Services

Those professional services associated with contract administration, project management and other specified services provided in connection with the administration of a project delivery method. Construction Management Services does not include construction.

##### 4.2.3 Professional Services

As used in the remainder of this Chapter and wherever referred to in the Manual, the term Professional Services means architect-engineer, construction manager agent, and land surveying services as defined in 4.2.1 & 4.2.2 above.

#### 4.3 SMALL PROFESSIONAL SERVICES CONTRACTS (FEES OF \$25,000 OR LESS)

- 4.3.1** Small professional services contracts are contracts for professional services where the compensation for services is \$25,000 or less.
- 4.3.2** This sum includes compensation for both basic services and additional services as defined in the Professional agreement.
- 4.3.3** This sum does not include payments for reimbursable expenses.
- 4.3.4** In awarding a small professional services contract, the Agency should request a firm to submit a proposal. The Agency may award contracts by direct negotiation and selection taking into account the following criteria:
- A. The nature of the project;
  - B. The proximity of the firm to the project;
  - C. The capability of the firm to produce the required services within a reasonable time;

- D. Past performance; and
- E. Demonstrated ability to meet time and budget requirements.

- 4.3.5** Subject to the foregoing considerations, the Agency may enter into contract negotiations with the selected firm.
- 4.3.6** However, if the Agency has now or has previously had other contracts with the firm, the Agency may not be able to contract with that firm. State Law prohibits entering into a small Professional contract if the sum of all fees, excluding reimbursable expenses, paid to the firm in the previous 24 months under small contracts exceeds \$75,000.
- 4.3.7** The Agency must use a proposal letter with the South Carolina Small Professional Services Contract Terms and Conditions (SE-240) or the Professional Services Incidental Services Contract (SE-235) to serve as the contract. After executing the professional agreement, the Agency must submit a copy to OSE for information purposes using the Transmittal of Small Professional Service Contract (SE-230).

#### **4.4 LARGE PROFESSIONAL SERVICES CONTRACTS**

##### **4.4.1 Selection Committee**

- A.** To procuring professional services that cannot be established as a Small Professional Services Contract as set forth in Part 4.3 above, the Agency must establish a selection committee (Committee). The Committee must be composed of those individuals the agency head determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The Committee shall consist of no less than 3 voting members. The Committee can be comprised of voting and non-voting members. Potential committee members may include:
1. End user of the project (Dean, Director, etc.),
  2. Director of Agency engineering/planning and or
  3. Director of Agency physical plant.
- B.** The Agency head or their designee sits as a permanent member of the Committee for the purpose of coordinating and accounting for the Committee's work.
- C.** The Agency should invite the OSE Project Manager to sit on the Committee as a non-voting member to assist the Committee as needed.
- D.** Committee members are subject to the Ethics, Government Accountability and Campaign Reform Act of 1991. Committee members 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 Confidentiality & Conflict of Interest Policy (SE-214), as a means of advising them of their responsibilities.
  2. Moreover, the Agency must have any other person involved in the decision making process sign an SE-214. For example, if the Agency Head is not a member of the Committee but has final say over the Committee's decision, the Agency Head must sign an SE-214. The same is true for members of a Board of Trustees.
- E.** The Committee must comply with the Freedom of Information Act; however, committee members must not disclose confidential information derived from proposals and negotiations submitted by competing offerors during the selection process. There is a summary of the requirements of this act in Chapter 1.

##### **4.4.2 Committee Duties**

In summary, the Committee's duties are to:

- A.** Develop the description of the proposed project;
- B.** Determine the professional services required for the project;
- C.** Prepare the formal invitation for professional services;
- D.** Determine the ranking range for each of the evaluation criteria;
- E.** Evaluate all timely responses and determine the list of firms to be interviewed; and
- F.** Attend all interviews, evaluate the qualifications of each firm, and determine the ranking of the firms interviewed.

##### **4.4.3 Invitation for Professional Services**

- A.** The Committee must prepare the invitation on an Invitation for Professional Services (SE 210).
- B.** At a minimum, the invitation must include the project name, the general scope of work, a description of all professional services required for the project, the anticipated project delivery method, the submission deadline, and how interested firms may apply for consideration.

- C. If the agency intends to use an Alternate Delivery Method, they must have approval from the State Engineer before advertising for professional services.
- D. The invitation should also notify all interested firms that their response must include a certification stating whether the business is a resident of South Carolina.
- E. Once the Agency is ready to advertise, it must submit the completed SE-210 to OSE in MS Word format for review and approval.
- F. Upon approval, OSE will submit the SE-210 to South Carolina Business Opportunities (SCBO) for advertisement. The Agency may advertise elsewhere but must advertise in SCBO.

#### **4.4.4 Short-Listing Professionals for Interviews**

- A. Upon receiving submittals in response to the invitation for professional services, the Agency shall review them for completeness. Each submittal shall include the following information:
  1. Federal Standard Form 330;
  2. Certification stating whether the business is or is not a South Carolina resident;
  3. Information responsive to the selection criteria; and
  4. Any other information that the invitation required.
- B. In the event of an incomplete submittal, the Agency may contact the firm to obtain the required information provided the submittal due date has not passed. Firms must submit any such supplemental information before the submittal due date. The Agency may disqualify any firm that fails to supply required information before the due date from further consideration for non-responsiveness.
- C. The Committee must evaluate all submittals prior to conducting any interviews.
- D. When the Committee finds two firms to be equally qualified, and one is a non-resident, the Committee must rank the resident higher than the non-resident.
- E. After evaluating the submittals, the Committee shall create a short-list of firms considered most qualified for the Committee to interview.
- F. The Committee shall select a minimum of three firms for interviews. If fewer than three firms responded to the invitation, the Committee should interview each firm. If only one submittal is received, the Committee should evaluate the firm's qualifications. The committee may or may not conduct an interview.
- G. The Committee must prepare a written report supporting its determination as to which firms it chose to interview using the Selection Committee Report for Interview Selection (SE-211).
- H. The Agency must immediately send a copy of the Notification of Selection for Interview (SE-212) to all firms that responded to the Invitation for Professional Services and post the SE-212 at the location set forth in the Invitation.

#### **4.4.5 Interviewing and Evaluating Short Listed Professionals**

- A. No later than ten days before the interview date, the Committee shall send written notice of the date and location for interviews to the short-listed firms.
- B. All interviews should occur on the same day.
- C. If the Committee will be interviewing the firms in various locations, the Chair should make sure that each location is similarly equipped and furnished.
- D. Each voting member of the Committee must be present for each interview. Only members of the Committee may be present during interviews and interviews should be held in "executive session".
- E. During the interviews, the Committee must evaluate the firms on the following criteria:
  1. Past performance;
  2. Ability of professional personnel;
  3. Demonstrated ability to meet time and budget requirements;
  4. Proximity to and knowledge of the locality of the project (application of this criterion must leave an appropriate number of qualified firms, given the nature and size of the project);
  5. Recent, current and projected workloads of the firms;
  6. Creativity and insight related to the project;
  7. Related experience on similar projects;



8. Volume of work awarded by the using Agency to the Professional during the previous five years - objective is to equitably distribute contracts among qualified Professionals including certified Minority Business Enterprises and firms that have not had previous state work; and  
NOTE: Firms awarded more work in the last 5 years must be scored lower than those who have been awarded less.

9. Other special qualifications required by the solicitation.

- F. The Committee must not discuss fees and compensation with the firms during the interviews.
- G. After the close of all interviews, each committee member must complete an evaluation of all interviewed firms using the Professional Services Selection Committee Member A/E Evaluation (SE 215). If a committee member determines two firms to be equally qualified, the committee member must re-evaluate their rankings to break any ties in scores prior to submitting the SE-215 to the Committee Chair.
- H. After each committee member has completed and submitted their SE-215 to the Chair, the Chair must compile these rankings into a committee ranking using the Professional Services Selection Committee Summary (SE 217).
- I. If the Committee determines two firms to be equally qualified and one firm is a resident and the other is a non-resident, the committee must rank the resident higher than the non-resident.
- J. If the Committee determines two firms to be equally qualified, the Committee must re-evaluate their rankings to break any ties in final rankings.

#### 4.4.6 Final Determination and Notification of Selection

- A. The Committee's decision on the ranking of each firm is final, subject only to the Agency's internal approval process.
- B. Once the Agency determines its ranking report is final, the Agency must prepare a Notification of Selection for Contract Negotiation (SE-219), listing the highest ranked firm.
- C. The Agency must immediately send a copy of the SE-219 to all firms that responded to the Invitation for Professional Services and post the SE-219 at the location set forth in the Invitation.
- D. The Agency must support the selection of a non-resident with a written determination explaining why they selected that firm.

#### 4.4.7 Negotiating Professional Services Contracts

- A. The Agency must attempt to negotiate with the firm with the highest ranking.
- B. If the Agency is unable to negotiate an acceptable contract with that firm, the Agency may terminate those negotiations and approach the second highest ranked firm. For more on terminating negotiations and negotiating with another firm, see 4.4.8 below.
- C. Successful contract negotiations require an exchange of information. The Agency should provide the firm with the Agency's budgetary goals for the project, master plans, program data, Agency standards, and with all available technical information about the project work area. This will enable the firm to estimate the design effort required for the project. Examples of technical information the Agency should provide, if available, include:
1. Program (unless it is to be developed by the Professional);
  2. Site boundary and/or topography surveys;
  3. Testing and surveys for hazardous material;
  4. Sub-surface investigations;
  5. Material testing, etc.
- D. The Agency should obtain a description of the services the firm proposes to provide and determine if the proposed scope of services is adequate or excessive.
- E. The Agency should also become familiar with the standard professional services contracts, SCOSE versions of the AIA Document B101, B133, B132 and the Professional Services Incidental Services Contract (SE-235). During the review of the standard contract, the Agency should ask and answer any number of questions. Examples are:
1. Are the insurance limits adequate to cover the potential risk on this project and if not, are we willing to bear the risk?
  2. If we want increased insurance limits are we willing to pay the additional cost? (Check with the firm to see what their insurance limits are. They may already be greater than the limits stated in the contract)
  3. What deliverables do we want?

- 4. Do we have critical delivery dates for some or all of the deliverables and if so, what are they?
- 5. Do we want digital drawings and if so what format and media?
- F. After exchanging information and agreeing on changes to the standard contract, prior to submittal to OSE for approval, the Agency is in a position to consider what would be a fair and reasonable fee for the firm's services. The OSE Project Manager should be consulted on any proposed changes to the standard contract.
- G. In addition to negotiating the Basic Services Fee, the Agency should negotiate any required Additional Services (those not covered by the scope of the Basic Services fee) and for reimbursable expenses.

#### **4.4.8 Unsuccessful Negotiations**

- A. If the Agency is unable to negotiate a contract with the highest ranked firm, the Agency may terminate negotiations.
- B. The Agency must provide the highest ranked firm with written notice of the termination of negotiations.
- C. Upon providing written notice of termination to the highest ranked firm, the Agency must prepare and post a new SE-219 showing the intent to negotiate a contract with the firm receiving the next highest ranking. This new Notice must be provided to all firms responding to the invitation.
- D. The Agency may then attempt to negotiate with this new firm.
- E. If the Agency is unable to negotiate a contract with this firm as well, the Agency may continue the process in the same manner until the Agency is able to negotiate a contract. At no time, however, should negotiations include more than one firm.

#### **4.4.9 Successful Negotiations Submittal to State Engineer**

- A. Following successful negotiations, the Agency must submit a Request for Authority to Execute a Professional Service Contract (SE-220), to OSE for approval.
- B. If the project is a PIP, the Agency needs to have an approved Form A-1 before submitting the SE-220 package to OSE. The Agency must include with the submission all the attachments listed at the bottom of the SE-220.
- C. The Agency may not execute the contract or authorize the firm to begin work until OSE has approved the SE-220.
- D. OSE has ten days to review and approve the SE-220. OSE will return an approved copy of the SE-220 to the Agency. The Agency may then execute a contract with the selected firm.
- E. If OSE does not approve the SE-220, the State Engineer will give written notification to the Agency declaring his intention to contest the proposed contract and the reasons why. The State Fiscal Accountability Authority (SFAA) will hear any such contest at its next regularly scheduled meeting after notification of the Agency. SFAA will notify the Agency in writing of its decision.

### **4.5 PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACTS (IDCs)**

- 4.5.1 A Professional Services Indefinite Delivery Contract (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.
- 4.5.2 Agencies procure Professional Services IDCs in the same manner as any professional service contract as set forth in this chapter. They do not, however, have to obtain OSE approval of the individual delivery orders to the contract.
- 4.5.3 Chapter 9 of this manual provides guidance on procuring IDCs.
- 4.5.4 The SE-600 series forms shall be used for IDC professional services contracts.

### **4.6 PROCEDURES FOR AMENDING PROFESSIONAL SERVICES CONTRACTS**

- 4.6.1 The Agency should negotiate fees for changes in the scope of work using good procurement practices and in keeping with the terms of the contract.
- 4.6.2 If an amendment to a Professional Services contract exceeds the Agency's Architect/Engineer Contract Amendment certification, the Agency must submit a completed Request for Authority to Amend a Professional Services Contract (SE 260), to OSE for approval, prior to authorizing the work.
- 4.6.3 If an amendment to a Professional Services contract is within the Agency's Architect/Engineer Contract Amendment certification, the Agency shall submit a completed SE-260 to OSE for information.

**4.7 SOLE SOURCE AND EMERGENCY SELECTION OF PROFESSIONAL SERVICES**

The Agency must make all Sole Source and Emergency procurements in accordance with Chapter 8 of this manual. Prior OSE approval of such procurements is not required.

**4.8 PROFESSIONAL LIABILITY INSURANCE**

**4.8.1** All design professionals working for the State should carry professional liability insurance.

**4.8.2** The SCOSE AIA Document B101, B132, B133, SE-235 and SE-240 set forth a recommended minimum amount of insurance. These amounts take into account the State's limited liability under Sovereign Immunity.

**4.8.3** The Agency should evaluate their risks associated with each project and the potential consequences, and adjust the amounts accordingly.

**4.9 DESIGN PROFESSIONAL ERRORS AND OMISSIONS**

**4.9.1** The Agency should notify the Design Professional whenever the Agency believes the Design Professional's work product contains errors or omissions. The A/E must correct any error or omission without cost to the agency.

**4.9.2** When the Design Professional's error or omission results in costs to the Agency over those the Agency would have paid had the error or omission not occurred, the Design Professional is responsible for such additional cost. For purposes of determining costs, each error or omission constitutes a separate event.

**4.9.3** If some or all of the increased costs due to an error are owed to a third party, such as a contractor, the Design Professional may elect to negotiate directly with the contractor and pay the contractor directly.

**4.9.4** All work added due to an omission must be negotiated through the agency to be sure the additional work is included in the construction contract by change order.

## CHAPTER 5

### DESIGN/CONSTRUCTION DOCUMENT & CONSTRUCTION STANDARDS

#### 5.1 RELATED STATUTORY AUTHORITY

- 5.1.1 SC Code § 6-9-110 exempts the State from any county, municipal or local ordinance or regulation that requires the purchase or acquisition of a permit, license, or other device used to enforce any building standard.
- 5.1.2 SC Code § 6-10-3- provides the South Carolina Energy Standards Act of 2009, as modified by 2012 Act 143, which requires that all buildings be designed and constructed in compliance with the 2009 International Energy Conservation Code.
- 5.1.3 SC Code § 6-29-770 requires the State to comply with local zoning ordinances.
- 5.1.4 SC Code § 10-1-180 provides that all construction, improvement, and renovation of state buildings shall comply with all applicable standards as specified in the Manual for Planning and Execution of State Permanent Improvements Part II. The State Engineer shall determine the enforcement of the aforementioned codes and referenced standards on state buildings.
- 5.1.5 SC Code § 10-5-210 et. seq., “South Carolina Accessibility Act,” sets accessibility standards for public buildings.
- 5.1.6 SC Code § 11-35-2720 permits the Chief Procurement Officers to prepare or review, issue, revise and maintain the specifications for supplies, services, and construction required by the State.
- 5.1.7 SC Code § 11-35-2730 requires that all specifications shall be written to assure cost effective procurement of the State’s actual needs and shall not be unduly restrictive.
- 5.1.8 SC Code § 11-35-2740 permits the Chief Procurement Officers to delegate in writing to a using agency the authority to prepare and utilize its own specifications. The specifications must assure maximum cost-effective procurements that are consistent with regulations promulgated by SFAA.
- 5.1.9 SC Code § 11-35-2750 requires that specifications prepared by architects and engineers shall be nonrestrictive and shall maximize the cost effectiveness of all procurements.
- 5.1.10 SC Code § 11-35-3020 provides additional bidding procedures for construction procurement.
- 5.1.11 SC Code § 23-43-10 et. seq., “South Carolina Modular Buildings Construction Act,” requires that all Modular Buildings be certified by the South Carolina Buildings Code Council.
- 5.1.12 SC Code § 40-3-280 and SC Regulation 11-11 requires all construction documents to bear a seal of a licensed architect, when required to be prepared by a licensed architect.
- 5.1.13 SC Code § 40-22-270 requires all construction documents bear a seal of a licensed engineer, when required to be prepared by a licensed engineer.
- 5.1.14 SC Code § 40-10-250 requires a Fire Sprinkler System Specification Sheet to be completed for every fire sprinkler system to be installed in South Carolina.
- 5.1.15 SC Code § 48-52-810 thru 860 provides the South Carolina Energy Independence Act of 2007 which requires that all major facilities projects not exempted by the act be designed and constructed to achieve at least LEED Silver certification from the US Green Building Council or at least two globes certification using the Green Building Initiative’s Green Globes rating system.
- 5.1.16 Governor’s Executive Order No. 82-19 requires the State Engineer to assure compliance with the “State of South Carolina Building Standards in Floodplain Areas”.

#### 5.2 AUTHORITY HAVING JURISDICTION

- 5.2.1 The State Engineer is the authority having jurisdiction over state buildings and determines the enforcement and interpretation of codes and standards applicable to those buildings.
- 5.2.2 The State Engineer is also the flood plain coordinator for state construction in flood hazard areas.
- 5.2.3 The requirement to obtain any local Business License, if applicable, is the responsibility of both the A/E and the Contractor.

#### 5.3 CODES AND STANDARDS

- 5.3.1 State design and construction must comply with the codes and standards, along with their published errata and other requirements listed in this Chapter.
- 5.3.2 If there is any conflict between the codes, standards, and/or regulations listed herein, the more stringent requirement controls.

- 5.3.3** Designers and Agency reviewers should ensure they have the latest errata for indicated editions to International Codes, other codes and standards.
- 5.3.4** Codes editions in force at the time of first submittal govern throughout the project, unless:
- A. Otherwise permitted by OSE, or
  - B. Design is delayed for more than 6 months and OSE adopts editions that are more current in the interim. No project may use a code that is older than one previous adopted edition.
- 5.3.5** OSE has adopted the following codes:
- A. International Building Code (IBC), 2015 Edition
  - B. International Existing Building Code (IEBC), 2015 Edition
  - C. International Fire Code (IFC), 2015 Edition
  - D. International Energy Conservation Code (IECC), 2009 Edition
  - E. International Fuel Gas Code (IFGC), 2015 Edition
  - F. International Mechanical Code (IMC), 2015 Edition
  - G. International Plumbing Code (IPC), 2015 Edition, with the following insertions:
    - 1. Section 305.4.1, insert “18” and insert “18”
    - 2. Section 903.1, insert “8”
  - H. International Private Sewage Disposal Code (IPSDC), 2015 Edition
  - I. International Property Maintenance Code (IPMC), 2015 Edition
  - J. International Residential Code for One and Two Family Dwellings (IRC), 2015 Edition, with the following insertions:
    - 1. P2603.5.1, insert “12” and insert “24”
  - K. International Wildland – Urban Interface Code (IUIWIC), 2015 Edition  
**Note:** The IUIWIC does not supersede existing statutory requirements.
  - L. International Code Council Performance Code (ICPC), 2015 Edition, upon State Engineer’s approval
  - M. International Swimming Pool and Spa Code (ISPS), 2015 Edition
  - N. Standard for Bleachers, Folding and Telescopic Seating, and Grandstands, ICC 300-2012 Edition
  - O. National Electrical Code (NEC) [NFPA-70], 2014 Edition
  - P. National Electrical Safety Code, IEEE-C2-2012 Edition
  - Q. Latest edition of the American National Standards Institute, Inc. (ANSI) document A117.1, Accessible and Useable Buildings and Facilities. Note that this standard is the standard adopted by the South Carolina Accessibility Act but this requirement does not relieve the Agency or the design professional from the Federal Statutory requirements that design and construction comply with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities. See <http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards>.
  - R. State Fire Marshal rules, regulations, and policies. See <http://www.scfiremarshal.llronline.com>.
  - S. South Carolina Elevator, Code, & Regulations. The SC Elevator Code references the American Society of Mechanical Engineers Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, and supplements thereto, ASME A17.1. See <http://www.llr.sc.gov/elevators/>.
  - T. State of SC Telephone Equipment Room and Communications/Data Systems Policies as formulated by the Division of State Information Technology (DSIT).
  - U. State of SC Building Standards in Floodplain Areas.
  - V. The South Carolina Modular Buildings Construction Act.

## 5.4 FLOOD HAZARD AREA DEVELOPMENT

### 5.4.1 General Requirements

The "State of South Carolina Building Standards in Floodplain Areas" requires compliance with the criteria in Title 44, Code of Federal Regulations, Parts 60.3 and 60.5. See <https://www.gpo.gov/fdsys/pkg/CFR-2011-title44-vol1/pdf/CFR-2011-title44-vol1-sec60-3.pdf>. Copies of these Parts are available from the State Coordinator’s Office for the National Flood Insurance Program (NFIP).

#### 5.4.2 Applicable Definition

FLOOD HAZARD AREAS are those areas identified by the Federal Emergency Management Agency (FEMA) on Flood Insurance Rate Maps (FIRMs) or Flood Hazard Boundary Maps (FHBMs) that are subject to inundation by a 100- year flood. (Any Zone A or Zone V is a flood hazard area).

#### 5.4.3 Permitting

- A. Where a project provides for new construction or improvement to an existing structure in a flood hazard area, the Agency must submit to the OSE Project Manager the Permit to Develop in a Flood Hazard Area (SE-510). For project within the Agency's Construction Contract Award Certification, submit the form directly to the State Engineer.
- B. The Agency should submit its application at the earliest opportunity, preferably at the time of schematic document submittal.
- C. The Agency must obtain this permit prior to starting construction.
- D. If the Agency intends to construct a non-residential structure with the first floor below the base flood elevation, the Agency must design the structure as a flood-proof structure and submit a Flood proofing Certificate, (FEMA Form 81-65), to OSE with the Construction Documents Submittal.
- E. For Historic Structures that are listed, eligible to be considered for listing or a contributing property to a listing in the National Register of Historic Places, a modified Permit may be issued. The Agency must submit documentation from the State Historic Preservation Office (SHPO) to verify the status of the building and provide details to what extent the building will be flood proofed without compromising the historical listing.

#### 5.4.4 Permit Requirements

- A. The Agency, with the assistance of the A/E, must provide all information required on the SE-510 or designate it as not applicable.
- B. The Agency must include all required forms and certifications with the submittal to OSE.
- C. The Agency must submit the following certifications when required for structures constructed in a flood hazard area:
  1. No-Rise Certification required for development in a regulatory floodway: A registered professional engineer must furnish the certification and supporting technical data.
  2. Elevation Certification (FEMA Form 81-31) required for structures in an A-zone or V-zone: A registered land surveyor must furnish this certification. Submit this form to OSE as soon as the lowest floor is completed.
  3. Flood proofing Certificate (FEMA Form 81-65) for non-residential flood proofed structures in an A-zone: A registered professional engineer or architect must furnish this certification to OSE with the SE-510, Permit to Develop in a Flood Hazard Area.
  4. V-Zone Certification required for structures in a V-zone: A registered professional engineer or architect must furnish this certification, using the SC Department of Natural Resources form. Submit this certification to OSE with the SE-510.
- D. The Agency and A/E may find these forms through the OSE website.

#### 5.4.5 Permit Variance

- A. Only the Floodplain Variance Board, at the request of OSE, may grant a variance permit to the Flood Hazard Area development requirements.
- B. If the Agency wants to pursue a variance, it must send a written request to the State Engineer that contains the following information:
  1. The particular floodplain management standard which prevents the proposed construction or improvement;
  2. The characteristics of the property or proposed structure which prevents compliance with the flood management standards;
  3. The minimum reduction of standards which would be necessary to permit the proposed construction or improvement;
  4. The particular hardship which would result if all standards were applied;
  5. Any additional information requested by the State Engineer.

#### 5.4.6 Flood Maps

- A. The Agency and A/E may purchase Flood Maps from FEMA at:
- |  |                            |
|--|----------------------------|
| FEMA Map Service Center  | Telephone: (800) 358-9616  |
| PO Box 1038  | Fax Number: (800) 358-9620 |
| Jessup, MD 20794-1038  |                            |
| Or <a href="http://msc.fema.gov/portal">http://msc.fema.gov/portal</a> |                            |
- B. The Agency and A/E may review Flood Maps at the following locations:
- State Coordinator's Office for the NFIP  
Rembert C. Dennis Building  
1000 Assembly Street  
Columbia, SC 29201 (803) 734-9103
- C. Flood maps for specific sites may be available for review at the local community planning, zoning or engineering office or at the local Natural Resources Conservation Service office.

#### 5.4.7 Publications

The Agency and A/E may obtain all publications and forms at the following locations:

Federal Emergency Management Agency	State Coordinator's Office for the NFIP
PO Box 2012	SC Department of Natural Resources
Jessup, MD 20794-2012	1000 Assembly Street
Attn: Publications	Columbia, SC 29201
Phone: (800) 480-2520	Phone: (803) 734-9103 Fax: (803) 734-9106
<a href="http://msc.fema.gov/portal">http://msc.fema.gov/portal</a>	

### 5.5 INFORMATION TECHNOLOGY REQUIREMENTS

- 5.5.1 The Agency must notify the Division of Technology Operations of all construction projects involving repair, modification, or installation of building communications systems, including telephone equipment rooms at the following address:

Department of Administration - Division of Technology Operations  
4430 Broad River Road  
Columbia, SC 29210  
Phone: (803) 896-0001  
Toll Free: (800) 922-1367  
Email: [servicedesk@admin.sc.gov](mailto:servicedesk@admin.sc.gov)

- 5.5.2 This notification should occur as early as possible in the project planning process to enhance coordination during design and construction and to minimize delays and rework.

### 5.6 EXISTING STRUCTURES - SPECIAL CONSIDERATIONS

#### 5.6.1 Applicable Code

The International Existing Building Code (IEBC), 2015, applies to the repair, alteration, change of occupancy, addition, relocation of all buildings.

#### 5.6.2 Hazardous Materials

- A. The Agency should test for hazardous materials in any building or part of a building that it plans to repair or alter.
- B. The Agency must comply with all State and Federal Regulations regarding testing for, abating, handling, and disposing of hazardous materials.
- C. Asbestos Building Inspection Requirements:
1. Prior to beginning a renovation or demolition operation at any facility, the facility owner and/or owner's representative shall ensure that an asbestos building inspection is performed to identify the presence of ACM.
  2. The asbestos building inspection shall include the facility or part of the facility affected by the renovation or demolition operation.
  3. To be acceptable, a building inspection shall have been performed no earlier than three years prior to the renovation or demolition, or, if more than three years have elapsed since the most recent inspection, the previous inspection shall be confirmed and verified by a person licensed as a building inspector.

### 5.6.3 Historic Building Modifications

- A. An historic building is a building listed on National Register of Historic Places. South Carolina law encourages state agencies and institutions to preserve National Register-listed properties they own or lease by establishing a consultation process with the State Historic Preservation Office (SHPO). The process is designed to incorporate historic preservation concerns with the needs of state projects. Agencies are encouraged to consult with SHPO on properties that are eligible for listing on the National Register.
- B. The Agency and A/E should prepare a plan of action for a project on an historic building using one or more of the four distinct standards of treatment of historic properties—Preservation, Rehabilitation, Restoration or Reconstruction.
- C. The Agency and A/E should use The Secretary of the Interior’s Standards for the Treatment of Historic Properties in formulating the plan of action. See <https://www.nps.gov/tps/standards.htm>.
- D. With the Agency’s and A/E’s input, OSE, in conjunction with SHPO and other interested state agencies, will determine the requirements for the renovation of historic buildings.
- E. The Agency may request a meeting with OSE for this purpose prior to or concurrently with the submittal of the Schematic Design phase documents.

### 5.6.4 Seismic Requirements

- A. When the Agency plans alterations to a building, the Agency must consult with OSE to determine if the IEBC requires a preliminary seismic evaluation. The Agency should obtain this determination before it concludes the fee negotiations with the selected A/E.
- B. When required by OSE, a structural engineer must perform the preliminary seismic evaluation of the existing building or structure(s) and prepare a report. A preliminary seismic evaluation is a Tier 1 evaluation in accordance with ASCE/SEI 41-13 Seismic Evaluation and Retrofit of Existing Buildings (as referenced in the ICC).
- C. The preliminary evaluation must include the complete examination of all available documents pertaining to the design and construction of the building and an "on-site" examination of the structural system(s) to verify the building was constructed in accordance with the documents.
- D. The structural engineer must base the Tier 1 evaluation on the following minimum requirements:
  - 1. Except as set forth in (b) below, a Life Safety (LS) level of performance.
  - 2. If the facility is an “Essential Facility,” an Immediate Occupancy (IO) level of performance (Category IV, Table 1604.5 of the IBC provides a listing of “Essential Facilities”).
  - 3. When soil properties are unknown as to site class, the engineer must use Site Class D unless the engineer determines that Site Class E or F is likely. See IBC Chapter 16.
- E. After performing a seismic evaluation, the structural engineer must prepare a final report that includes the following:
  - 1. The scope of the investigation
  - 2. The site and building data including a general building description, structural system description (framing, lateral-force-resisting-system), floor & roof diaphragm construction, and basement and foundations systems
  - 3. Nonstructural systems description (all nonstructural elements affecting seismic performance)
  - 4. Building Construction Type
  - 5. Performance Level
  - 6. Level of Seismicity
  - 7. Soil Type
  - 8. List of Assumptions: (material properties and site soil conditions)
  - 9. Findings: (a prioritized list of deficiencies)
- F. The Agency must submit a copy of the preliminary seismic evaluation report to OSE at the Schematic Design phase. OSE, in consultation with the Agency, will determine the extent to which seismic retrofitting shall be included in the renovation project.

### 5.6.5 Accessibility by the Physically Disabled

- A. If in the opinion of the A/E, the building cannot provide accessibility to the physically disabled due to technical unfeasibility, the A/E must provide, during Schematic Design submittal:
  - 1. A prioritized list of deficiencies
  - 2. The reasons supporting a finding of technical unfeasibility.
  - 3. Design alternatives



- B. After reviewing the Schematic Design, OSE may consider “technical infeasibility” as an acceptable rationale for less than full compliance.

## 5.7 MODULAR BUILDINGS

- 5.7.1 Modular buildings are buildings of closed construction, other than mobile or manufactured homes, constructed off-site in accordance with applicable codes, and transported to the point of use for installation or erection.
- 5.7.2 Installation of modular buildings is construction work that must meet the same requirements as new construction. The codes cited in paragraph 5.3 of this manual are applicable.
- 5.7.3 The Agency and A/E should give specific attention to design of foundations (for seismic and wind loading).
- 5.7.4 The Agency must comply with Chapter 10 of this manual when moving state-owned modular buildings.

## 5.8 PROHIBITED BUILDING MATERIALS

### 5.8.1 Hazardous Materials:

The Agency may not use hazardous materials on state projects without prior approval from OSE, even if the law allows such use.

### 5.8.2 Impact Resistant Gypsum Wallboard:

Impact resistant gypsum wallboard may not be used in State buildings unless prior approval is obtained from OSE. If OSE approves high impact resistant gypsum wallboard, the Agency must indicate its use in an appropriate location readily visible and approved by the Fire Authority having Jurisdiction.

## 5.9 DESIGN RELATED CONSTRUCTION COORDINATION, PERMITS AND APPROVALS

- 5.9.1 The Agency is responsible for obtaining all design and construction related permits and approvals from other authorities having jurisdiction over the project.
- 5.9.2 State law requires the Agency to comply with local zoning ordinances as they affect the use and appearance of buildings.
- 5.9.3 The Agency will need to contact other authorities, including local and state authorities, to obtain permit requirements. Appendix H provides a listing of design-related permits the Agency may be required to obtain.
- 5.9.4 The Agency must be sure and have the A/E incorporate the requirements of all authorities having jurisdiction into the construction documents.
- 5.9.5 The Agency must either provide OSE with copies of all design related permits and approvals or with certification that the Agency has obtained them prior to applying for a building permit.

## 5.10 ENERGY CONSERVATION AND SUSTAINABLE CONSTRUCTION

- 5.10.1 All projects meeting the definition of a major facility project must be designed, constructed and certified to achieve at least LEED Silver certification from the US Green Building Council or at least two globes certification using the Green Building Initiative’s Green Globes rating system.

### 5.10.2 Major Facilities Projects are:

- A. State-funded projects for new construction in which the building to be constructed is larger than 10,000 gross square feet.
- B. State-funded projects for renovation of a facility in which the renovation will cost more than 50% of the replacement value of the facility or the renovation involves a change in occupancy.
- C. State-funded projects for commercial interior tenant fit-out where the leasable area to be fitted out is greater than 7,500 square feet.

### 5.10.3 Exemptions

Major facilities projects do not include the following:

- A. Any building that does not have conditioned space as defined by ASHRAE’s Standard 90.1.
- B. Any public school building (grades K – 12) as defined in SC Code § 59-1-50.
- C. Any correctional facility constructed for the Department of Corrections, Department of Mental Health, or Department of Juvenile Justice.
- D. Any building funded by the Department of Health and Environmental Control with the primary purpose of storing archived documents.
- E. Any building funded the State Ports Authority, the Coordinating Council for Economic Development, or the State Infrastructure Bank.

#### 5.10.4 Special Considerations for Renovation and Tenant Fit-out Projects

- A. For renovation and commercial interior tenant fit-out projects meeting the definition of major facilities project, the Agency must analyze the project using a life cycle cost analysis of the projected capitol and operational cost over 30 years.
- B. The analysis must compare the costs and benefits of designing, constructing, maintaining, and operating the facility at (1) the LEED Silver standard or two globes standard, or better, with certification; (2) normal industry and regulatory standards; or (3) some standard between (1) and (2) that causes the project to be designed and constructed in a manner that achieves the lowest thirty-year life cycle cost.
- C. The Agency must include the 30 year life cycle cost analysis with their Phase II PIP Application.

#### 5.10.5 Energy Performance Requirements

- A. MAJOR FACILITY PROJECT DESIGNED TO ACHIEVE TWO GLOBES CERTIFICATION: The A/E must design the project to earn at least 20% of the available points for energy performance under Green Globe's rating system "C.1.1 Energy Consumption."
- B. MAJOR FACILITY PROJECT DESIGNED TO ACHIEVE LEED SILVER CERTIFICATION: The A/E must design the project to earn at least 40% of the available points for energy performance under UBGC's rating system "EA Credit 1: Optimize Energy Performance."

#### 5.10.6 Waiver of Energy Performance Requirements

- A. The Agency may request a waiver of the Energy Performance requirements in Paragraph 5.10.5 from OSE.
- B. A waiver requires OSE's determination that meeting the energy performance requirements is not economically feasible.
- C. If the Agency desires a waiver, the Agency must submit to OSE documentation showing that the incremental cost of achieving the energy performance requirements cannot be amortized over a period of 20 years.

#### 5.10.7 Reporting Requirements

The Agency must make the following reports to OSE and the Energy Office:

- A. Upon final completion of a project: Submit to the Energy Office a description of all potential environmental benefits, including, but not limited to, water resources savings and reduction of water waste. The Agency may obtain this information from the facility designer.
- B. Upon certification of a facility: Submit to OSE the level of LEED or Green Globe certification achieved for facility.
- C. Annually Submit to the Energy Office:
  - 1. A report of actual savings in energy cost for all major facilities designed and constructed to the standards of the Energy Conservation and Sustainable Construction Act.
  - 2. Any conflicts or barriers that hinder the effectiveness of the Energy Conservation and Sustainable Construction Act.
- D. In the 5<sup>TH</sup>, 10<sup>TH</sup>, and 15<sup>TH</sup> year following certification of a facility: Submit to the Energy Office a report on the ability of the facility to continue to operate at the standard to which it was originally certified.

### 5.11 GREEN PURCHASING INITIATIVE

5.11.1 South Carolina has adopted a Policy encouraging Green Purchasing. This Part includes a statement of that policy and standards in the policy specific to construction.

5.11.2 The entire policy is available at <https://procurement.sc.gov/agency/green-purchasing>

5.11.3 Agencies should consider this policy and discuss it with their Architect-Engineer for purposes of incorporating sustainable construction practices in all of their projects.

#### 5.11.4 Statement of Policy

- A. South Carolina state government seeks to further reduce the environmental and human health impacts of its operations by integrating environmental considerations into its procurement process.
- B. South Carolina state government is committed to environmentally preferred purchasing in recognition of the need to more efficiently use natural resources, reduce waste, save money, sustain markets for materials collected in recycling programs and protect South Carolina's environment, economy and the quality of life of all its citizens.
- C. Therefore it is the policy of the state of South Carolina to endeavor to:
  - 1. Improve or implement green purchasing practices that reduce waste and result in the purchase of fewer products, when practicable and cost effective, without reducing the safety or quality of the products.

2. Make purchasing decisions with the understanding and consideration of the environmental impact and life cycle cost of a product or service during its manufacture, transport, use and end-of-life management.
  3. Identify and purchase products and services that prevent pollution, eliminate or reduce toxins, conserve energy and water, contain recycled-content material and minimize environmental impacts.
  4. Purchase from South Carolina businesses to minimize transportation costs and emissions, when it can be done with adequate competition and without compromise of performance or quality of products or services.
- D.** This Policy applies to all South Carolina state agencies and publicly funded colleges and universities and others defined as governmental bodies per SC Code Section 11-35-310(18),.
1. Vendors, contractors and grantees will comply with applicable sections of this policy for products and services that are provided to the state of South Carolina.
  2. All purchases under this policy are subject to local, state or federal requirements as applicable.
  3. Nothing in this policy should be construed as requiring a state agency or publicly funded college or university to procure products that do not perform according to their intended use or reduce safety, quality, or effectiveness.

#### **5.11.5 Standards Specific to Construction**

- A.** GREEN BUILDING PRACTICES - Consider a whole-systems approach to the design, construction, and operation of buildings and structures that help mitigate the environmental, economic, and social impacts of construction, demolition, and renovation. Green Building Practices such as those described in the LEED or Green Globe Rating Systems, recognize the relationship between natural and built environments and seeks to minimize the use of energy, water, and other natural resources and provide a healthy productive environment.
- B.** GREEN BUILDING CONSTRUCTION
1. Consider the use of on-site renewable energy such as solar, wind, geothermal and biomass to reduce impacts of fossil fuel use.
  2. Consider deconstruction and re-use of materials or purchase previously used or salvaged building materials to reduce waste and the need for virgin materials.
  3. Reduce the depletion of finite raw materials by using rapidly renewable materials such as bamboo, wool, cotton, linoleum and cork.
  4. Maximize the use of natural lighting in buildings to avoid the use of artificial lighting.
  5. Develop a plan for measurement of building water and energy consumption to provide ongoing accountability of actual usage.
  6. When renovating space, plan for flexibility and future change by using easily moved walls, outlets, etc.
  7. Consider short-term and long-term costs in specifying material and equipment. This includes an evaluation of the total costs expected during the life of the material and equipment.
- C.** GREEN LANDSCAPING
1. Provide for recycled-content materials for hardscape and landscape structures.
  2. Reduce water used for irrigation by using plants that are native to the area where they are planted and drought-tolerant plants that require minimal or no watering once established.
  3. Reduce water pollution and heat-island effect by reducing the amount of impervious surfaces in the landscape. Permeable substitutes such as pervious concrete or pavers are preferred for walkways, patios, driveways and low-volume traffic areas.
  4. Reduce light pollution by only lighting areas to the level required for safety and comfort.

### **5.12 REQUIRED INSPECTION SERVICES**

**5.12.1** The Agency must provide for the construction inspection services required by Chapter 1 of each International Code Council Series of Codes adopted in 5.3 and special inspection services required in Chapter 17 of the IBC.

**5.12.2** A listing of Inspection and Testing firms on statewide term contract is located at [https://procurement.sc.gov/files/Copy%20of%20Inspections\\_Testing\\_Firms\\_050516%20updated%209.12.17.xls](https://procurement.sc.gov/files/Copy%20of%20Inspections_Testing_Firms_050516%20updated%209.12.17.xls)

### **5.13 NON-RESTRICTIVE SPECIFICATIONS**

**5.13.1** State Procurement Law requires nonrestrictive specifications.

- A.** Do not list one product/manufacture and “or equal.”

- B. Determine the essential features of the product used as the basis of design and, unless there is only a single source (sole source) for products meeting the essential features of the basis of design, list multiple products and their manufacturers that meet these features.
- C. Ensure all listed products/manufacturers (and appropriate model numbers) meet all the essential features. A product should not be listed contingent on a subsequent determination by the A/E that it meets the essential features of the basis of design.
- D. Alternatively, identify the essential features and provide that any product/manufacture who meets the essential features can be approved utilizing substitution rules set forth in the procurement.

**5.13.2** If the agency wishes to pursue a sole source procurement, see Chapter 8 of this manual.

#### **5.14 DOCUMENT SUBMITTALS TO OSE**

- 5.14.1** Agencies or their architects or engineers (A/E) must submit Schematic Design and Construction Documents to OSE for their review and approval in accordance with the procedures of this chapter. The term "A/E" in this chapter means the individual or firm preparing the Schematic Design, Design Development, and Construction Documents.
- 5.14.2** OSE will not review drawings and documents that are incomplete, ambiguous, or difficult to read. OSE will notify the A/E and the Agency of such condition and ask for a revised submission.
- 5.14.3** OSE's statutory review period does not start to run until it receives a complete, unambiguous, and readable set of drawings and documents.

#### **5.15 PROJECT NAME AND NUMBER**

- 5.15.1** The Agency and the A/E must place the project name and number on all project documents and correspondence.
- 5.15.2** If the project is a PIP, the project name and number is that shown on the Form A-1.
- 5.15.3** If the project is a Non-PIP, the name is that assigned by the Agency and the project number is that assigned by OSE.
- 5.15.4** For meanings of Project numbers assigned to PIPs and Non-PIPs see Chapter 1 of this manual.

#### **5.16 DRAWINGS**

Drawings submitted to OSE for review shall be submitted in the following formats:

- 5.16.1** Printed and delivered as follows:
  - A. A final printed font size of 1/8", providing graphic scales on plans, elevations and sections (increase font size as needed to assure legibility at reduced sized printing)
  - B. A maximum overall paper size of 30" x 42"
  - C. Drawings and Project Manuals must be bound;
  - D. A single bound set of drawings must not exceed 25 pounds
- 5.16.2** Delivered in PDF format.

#### **5.17 PROJECT MANUAL**

- 5.17.1** The Guide for Organizing and Completing the Project Manual - Design-Bid-Build found in Appendix B describes the requirements for organizing the OSE-mandated front-end documents for the typical design-bid-build construction project.
- 5.17.2** The project manual must include the following in the order shown:
  - A. Table of Contents
  - B. SE-310 – Invitation for Construction Services (Page 1 ONLY)
  - C. AIA A701-1997 Instructions to Bidders- South Carolina Division of Procurement Services, Office of State Engineer Version (A701 1997.SCOSE)
  - D. Bid Bond – AIA Document A310 (or reference to it)
  - E. Bid Form (SE-330, Lump Sum Bid Form or SE-332, Unit Price Bid Form)
  - F. Reference to AIA Document A101-2007 Standard Form of Agreement between Owner and Contractor - South Carolina Division of Procurement Services, Office of State Engineer Version (A101 2007.SCOSE)
  - G. AIA Document A201-2007 General Conditions of the Contract for Construction- South Carolina Division of Procurement Services, Office of State Engineer Version (A201 2007.SCOSE)

- H. SE-355 – Performance Bond
- I. SE-357 – Labor and Material Payment Bond
- J. SE-380 – Change Order to Construction Contract
- K. Technical Specifications

## 5.18 SPECIAL BIDDING REQUIREMENTS

### 5.18.1 Bid Alternates

- A. The use of Bid Alternates in bidding can be problematic and should be avoided if possible. The base bids are to meet the Agency’s needs. Alternates are used only to enhance the base bid.
- B. Alternates may not exceed three (3) in number.
- C. An Agency should not include any Alternate that the Agency has no reasonable chance of obtaining within the approved construction budget.
- D. The construction documents must clearly reflect the base bid and all alternates.
- E. The Agency may accept Alternates in any order or combination and must determine the low Bidder based on the sum of the Base Bid and Alternates accepted. An Agency may not subsequently add to a contract by change order an alternate that the Agency did not accept at the time of award, unless the contractor would have been low bidder had the alternate been included in the award.

### 5.18.2 Subcontractor Listing Requirements

- A. On page BF-2 of the Bid Form the Agency must list by specialty and contractor license designation (per SCLLR), certain subcontractors expected to perform work for the prime contractor.
- B. When bidding this work, the contractor is required to list by name the subcontractor(s) who will perform this work.
- C. The Procurement Code sets forth the following:
  1. The Agency, in consultation with the project architect/engineer, must identify by specialty the subcontractors:
    - a. Who are expected to perform work for the prime contractor on the project
    - b. Whose subcontracts are expected to exceed three percent (3%) of the prime contractor’s total base bid.
  2. The Agency, in consultation with the project architect/engineer, may identify by specialty a subcontractor expected to perform work for the prime contractor which is vital to the project.
  3. The Agency is to make its identification of subcontractors by specialty in the invitation for bids. On page BF-2 of the Bid Form there is a column provided for this (first column on the left). The second column is to list the licensing designation required for this specialty.
  4. The Agency’s determination of which subcontractors to list in the invitation for bids is not protestable.
  5. A bidder’s listing of subcontractors in response to the invitation for bids is protestable.
- D. If the prime contractor is expected to self-perform an item of work rather than subcontract that item, do not list that specialty on the bid form. For example, if the agency is bidding out an air conditioning project and under the Contractor’s Licensing Act only a mechanical contractor with an air conditioning specialty (“AC” sub-classification) can bid the work as a sole prime contractor, do not include air conditioning in the list of specialty subcontractors.
- E. The listing of the specialty subcontractor(s) should be clear enough that reasonable potential bidders understand what you are asking for. Keep in mind that the prime contractor must use the listed subcontractor for the listed specialty. If the prime bidders do not have a clear understanding of what work the listed subcontractor is intended to perform, he may have a nasty surprise when it comes to performance.

## 5.19 DESIGN SUBMITTAL REQUIREMENTS

5.19.1 The A/E with Agency’s approval must submit the following to OSE for review:

- A. Schematic Design documents and Estimate of Construction Cost, transmitted with the SE-271, Design Document Transmittal Form
- B. Construction Documents and Final Estimate of Construction Cost, transmitted with the SE-271
- C. Bid Documents transmitted with the SE-271

- 5.19.2** The Agency or its A/E may request additional reviews; however, any such additional reviews shall not count against OSE statutory review time.
- 5.19.3** All submittals may not be required on all projects. The A/E shall contact the OSE Project Manager for number of copies and necessary submittals.

## **5.20 OSE REVIEW AND APPROVAL PROCESS**

- 5.20.1** OSE must review design and construction documents for projects exceeding the Agency's construction contract certification. OSE can provide technical assistance to agencies in reviewing design and construction documents within the Agency's certification.
- 5.20.2** OSE's review of design and construction documents for general compliance with codes does not relieve the Agency or the A/E of responsibility for knowledge of and compliance with all codes and regulations of other governing authorities.
- 5.20.3** OSE may revoke any approval issued under the provisions of this manual where OSE based its approval on any false statement or misrepresentation of fact in correspondence, drawings, specifications, or data.
- 5.20.4** If there is a conflict between the requirements of any code, regulation, or standard regarding safety, health, energy-use compliance, or environmental compliance, the Agency or the A/E should request an interpretation from the OSE Project Manager.
- 5.20.5** For scheduling purposes, the Agency and the A/E should allocate a total of 45 days for reviews of "properly completed" submittals. When the A/E provides a properly completed submittal, the review time will commence from the date of receipt of the submittal by the OSE Project Manager until the date the review is completed.
- 5.20.6** OSE will provide written review comments to the Agency and the A/E upon completion of each stage of document review.
- 5.20.7** If the Agency allows, the A/E may continue to work on the project, at its own risk, during the OSE review periods. This does not relieve the A/E from complying with all OSE comments made during the review periods.

## **5.21 SCHEMATIC DESIGN DOCUMENTS**

- 5.21.1** To assist OSE in understanding the schematic documents, the Schematic Design Document submittal to OSE must include a copy of the programming statement.
- 5.21.2** To be "Properly Completed" the Schematic Design Documents submittal must meet the following minimum level of project information and project definition:
- A.** Complete Appendix H, Code Tables 3, 4, and 5 to the extent information is known and applicable.
  - B.** Site Plan showing the following:
    1. Building
    2. Property lines
    3. Easements
    4. Encroachments
    5. Setbacks
    6. Streets
    7. Parking
    8. Existing contours
    9. Adjacent structures and distance to adjacent structures
    10. Utilities;
    11. Fire apparatus access
    12. Accessibility
    13. North Arrow
    14. Other items defining the site (hazards, wetland, fire district, environmental issues, etc.)
  - C.** Drawings showing the following:
    1. Basic Code Review and list of applicable codes and standards
    2. Individual Spaces with names
    3. Life safety plans with wall, floor, and roof rating delineated and complete means of egress delineated with exit capacities. Identify doors with card access and other security measures.

4. Elevations sufficient to describe the building
  5. Facilities for the physically disabled incorporated within the building
  6. Shaft locations
  7. Fire extinguisher locations
- D. Unless otherwise agreed to by OSE, the Schematic Design Document review shall be a table top review with the OSE Project Manager, OSE discipline reviewers, Agency Project Manager, Architect, and Architect's civil, structural, mechanical, fire protection, and electrical engineering consultants present.

## 5.22 CONSTRUCTION DOCUMENTS

The following project information is required:

**5.22.1** Drawings completed, coordinated, and corrected shall have as a minimum; items indicated in the Schematic Design Documents review and additional items that may include:

- A. Cover/Index:
  1. Abbreviations
  2. Symbols
  3. Legends
  4. Notations
  5. Location Map
  6. Signed and dated certifications contained in Appendix H.
- B. Project Code Criteria:
  1. Listing of all Codes applicable to project.
  2. Properly completed Code Tables 1 thru 12.
  3. UL Design Numbers for Rated Systems
  4. All fire and/or smoke-rated elements of the project (such as floors, ceilings, roofs, partitions, barriers and walls) are to be indicated on all disciplines
- C. Civil/Site/Landscape
  1. Building & Structures: existing and proposed
  2. Pedestrian & Vehicular accesses: existing and proposed including:
    - a. Fire Apparatus access
    - b. Access for disabled
  3. Parking
  4. Existing and new utilities
  5. Landscaping/topography – hard & soft: existing and proposed
- D. Architectural Drawings:
  1. Plans with north arrow (life-safety items are to be submitted as separate plans, unless they are clearly shown on a single floor plan):
    - a. Roofs
    - b. Floors
    - c. Accessible routes clearly defined with turning radius and locations and dimensions of accessible fixtures as required by ANSI
    - d. Layouts of storage shelving, casework, laboratory equipment, or other specialties
    - e. Hazard Control areas
    - f. Shafts and chases with ratings
  2. Life-safety plans including the following:
    - a. Rated Walls with symbols
    - b. Rated floors with rating
    - c. Rated Components
    - d. Details of Rated Assemblies
    - e. Exit Signs

- f. Complete means of egress, including Exit Travel Distances and Common Path of Egress Travel Distances
  - g. Exit capacities
  - h. Identify doors with card access and other security measures
  - i. Fire extinguisher locations
  - 3. Elevations – Exterior and Interior
  - 4. Sections & Details of construction including wall, shaft, and building sections
  - 5. Openings, Finish & Other Schedules
  - E. Structural Drawings
  - F. Fire Protection Drawings
  - G. Plumbing
  - H. Mechanical
  - I. Electrical
  - J. Other drawings that may be required to fully identify the project including, if not shown elsewhere in the construction documents, drawings showing:
    - 1. Approximate size of special equipment (i.e. compressors, generators, transformers, electronic equipment racks, consoles, panels, distributing frames, hoists, and cranes)
    - 2. Distance to adjacent buildings
    - 3. Unusual Features
- 5.22.2** Project Manual completed, corrected, and coordinated to include the following:
- A. Table of Contents
  - B. Front-end documents:
    - 1. SE-310, page 1, ready for signature by the OSE Project Manager
    - 2. Items identified in section 5.17 of this chapter.
  - C. Soils Report, Hazardous Materials Reports and other informational data pertinent to the project
  - D. Specifications:
    - 1. Technical Specifications
    - 2. The documents shall include the Fire Sprinkler System Specification Sheet, as published by the State Fire Marshal. The Fire Sprinkler System Specification Sheet shall be prepared, sealed, signed and dated by the projects fire protection engineer who shall be a South Carolina licensed professional engineer.
    - 3. Statement of Special Inspections
- 5.22.3** Other Documents:
- A. Additional narrative, schedule, calculations, drawings and information required to demonstrate to OSE and the Agency a thorough understanding of the project and compliance with codes.
  - B. Documents showing design compliance with the International Energy Conservation Code (IECC- 2009), for commercial buildings or portions thereof (not otherwise exempted).
  - C. Page 2 of the SE-310, submitted separately, signed and dated by the Agency to include the following:
    - 1. Construction Budget for this Contract;
    - 2. Final Estimate of Construction Cost, including all Alternates, with Agency approval;  
(NOTE: This Estimate must be the same or less than the Construction Budget. OSE will not advertise projects that are estimated to exceed the Construction Budget.)
    - 3. Status of all required permits, zoning appeals, BAR approvals, etc; and
    - 4. Copies of all permits and approvals are to be submitted with this page.

## **5.23 BIDDING DOCUMENTS**

- 5.23.1** A copy of the final Bidding Documents as printed and issued to prospective bidders, which incorporate the approved resolution of all previous review comments shall be submitted to OSE with design professionals' seals and signatures.
- 5.23.2** The Bidding Documents are identified in Appendix B.



## CHAPTER 6

# PROCUREMENT OF DESIGN-BID-BUILD CONSTRUCTION CONTRACTOR COMPETITIVE SEALED BIDDING

(Procurements Greater than \$50,000)

### 6.1 RELATED STATUTORY AUTHORITY

- 6.1.1 SC Code § 10-1-180 gives the State Engineer the authority and responsibility to determine the enforcement and interpretation of the building codes and reference standards on state buildings.
- 6.1.2 SC Code § 11-35-1520(13) list minor informalities and irregularities that are not cause for bid rejection.
- 6.1.3 SC Code § 11-35-1810 requires that the responsibility of the bidder shall be determined for each contract let by the State.
- 6.1.4 SC Code § 11-35-3005 provides a list of project delivery methods agencies are allowed to use on construction projects.
- 6.1.5 SC Code § 11-35-3015(2) provides that if the agency determines that design-bid-build is the most appropriate delivery method for the project, construction services must be procured through the competitive sealed bidding process as provided in SC Code §§ 11-35-1520 and 3020.
- 6.1.6 SC Code § 11-35-3020 requires that the agency send all responsive bidders a copy of the bid tabulation within 10 working days following the bid opening.
- 6.1.7 SC Code § 11-35-3020 permits negotiations after unsuccessful competitive sealed bidding within the limitations described by the law.
- 6.1.8 SC Code § 11-35-3020 requires that the lowest responsive bidder meets the State standards of responsibility.
- 6.1.9 SC Code § 11-35-3020 requires that the Agency provide all responsive bidders (and preferably any non-responsive bidders) a copy of the Bid Tabulation at the same time they provide them a copy of the Notice of Intent to Award.
- 6.1.10 SC Code § 11-35-3023(B) permits prequalification of construction bidders in a design-bid-build procurement for unique construction, or for projects over ten million dollars in value, in accordance with OSE criteria and procedure.
- 6.1.11 SC Code § 11-35-3030 requires that all competitive sealed bidding for state construction contracts in excess of \$50,000 be provided with bid security.
- 6.1.12 SC Code § 11-35-3030 and § 29-6-250 requires that all construction contracts valued in excess of \$50,000 be provided with both a performance and a labor and material payment bond in the full amount of the contract.
- 6.1.13 SC Code § 11-35-4210 permits the State Engineer to resolve protested construction solicitations and awards.
- 6.1.14 SC Code § 40-11-260 requires general and mechanical contractors to be licensed for projects valued at \$5,000 or more.
- 6.1.15 SC Code § 40-79-29 requires a valid license to engage in a burglar or fire alarm business or activity. Note that SC Code § 40-79-310 and § 40-11-410(5)(d) permits mechanical contractors with an electrical contractor's license to design, install, and service fire alarm systems.
- 6.1.16 SC Regulation 19-445.2042(C) states that a pre-bid conferences may not be made mandatory unless by written determination of the Agency head or their designee.
- 6.1.17 SC Regulation 19-445.2050 permits only the information disclosed at the bid opening to be considered as public information under the Freedom of Information Act until the Notice of Intent to Award is issued.
- 6.1.18 SC Regulation 19-445.2145(B)(3) designates design-bid-build as an appropriate project delivery method for any infrastructure facility (except guaranteed energy, water, or wastewater savings contracts).

### 6.2 ADVERTISING PROJECTS FOR BIDDING

- 6.2.1 The competitive sealed bidding phase of a construction project begins with the advertisement of the project in South Carolina Business Opportunities (SCBO). It ends with the signing of the construction contract by both parties and the issuance of the Notice to Proceed.
- 6.2.2 The Agency must advertise all construction contracts with a construction budget exceeding \$50,000 in SCBO (see Chapter 8 for small purchase advertisement requirements). The SCBO advertisement is the official invitation for construction bids. The Agency may advertise in other media but errors in advertisements other than SCBO do not constitute a basis for a protest.

- 6.2.3 The Agency must submit advertisements for construction contracts that exceed the agency's construction certification to OSE, using the Invitation for Design-Bid-Build Construction Services (SE-310) in MS Word format, for approval.
- 6.2.4 After a satisfactory review of the bid documents, OSE will approve the Invitation and submit it to SCBO for publication.

### 6.3 PRE-BID CONFERENCES AND SITE VISITS

- 6.3.1 Agencies must advertise pre-bid conferences and site visits in SCBO.
- 6.3.2 The Agency should schedule the conference to occur no less than 14 days prior to bid opening. This will allow the Agency to clarify by addendum any issues bidders raise at the pre-bid conference
- 6.3.3 An Agency desiring to make potential bidders' attendance at a pre-bid conference mandatory in order to bid the project must make a written determination that mandatory attendance is justified by the unique nature of the project and that a mandatory conference will not unduly restrict competition. The Agency must place this determination in its procurement file and provide a copy for information only to OSE with the SE-310.
- 6.3.4 Non-Mandatory Pre-Bid Conferences and Site Visits do not require attendance by prime bidders in order for them to bid a project.
- 6.3.5 **Who Should Attend:** The Agency, the Agency's A/E, and the OSE Project Manager should attend all pre-bid conferences for projects exceeding the Agency's construction contract certification.
- 6.3.6 **Conducting the Conference**
  - A. The Agency or its A/E should conduct the pre-bid conference. The guide "Pre-Bid Conference Discussion Items" found in Appendix B contains a list of suggested pre-bid discussion items. The Agency and its A/E should customize the actual list of discussion items for the particular project.
  - B. The Agency or its A/E should discuss the Bid Documents (project manual and drawings) at the pre-bid conference in sufficient detail to ensure that all prospective bidders understand the scope of the project.
- 6.3.7 **Attendance at a Mandatory Pre-Bid Conference**
  - A. If no prospective bidder, or only one prospective bidder, attends a mandatory pre-bid conference, the Agency must cancel the invitation for bid or schedule a new pre-bid conference that is either mandatory or non-mandatory.
  - B. If the Agency chooses to schedule a new pre-bid conference, it must advertise the conference in SCBO. The Agency should schedule this new conference to occur no less than 14 days prior to bid opening.
  - C. This may require the Agency to advertise a new bid opening date and time in SCBO at the same time it advertises the new pre-bid conference.

### 6.4 ADDENDA

- 6.4.1 The Agency must issue an addendum for modifications or corrections to the bid documents including, but not limited to, the following:
  - A. Providing a list of all firms represented at a mandatory pre-bid conference;
  - B. Providing responses to questions received from potential bidders during the bidding period;
  - C. Providing a list all substitutions approved by the Agency or design professional;
  - D. Changing the date for the receipt of bids;
  - E. Rescheduling a bid opening; or
  - F. Canceling the invitation for bids.

**NOTE:** Meeting minutes from a Pre-Bid Conference/Site Visit are NOT to be included in an addendum. Only information that changes the contract documents should be included.
- 6.4.2 The Agency must issue all addenda modifying or correcting the bid documents at least 120 hours, exclusive of state holidays, prior to bid opening. If there are intervening holidays, the 120 hour period must be increased by 24 hours for each such holiday.
- 6.4.3 If the Agency becomes aware of a critical modification or correction to the bid documents less than 120 hours prior to bid opening, the Agency should postpone the bid opening to allow issuance of the change a minimum of 120 hours prior to the revised bid opening time and date.
 

**Example:** Agency's architect issues an addendum at 3 PM on a Thursday. 120 hours later is at 3 PM on the following Tuesday. However, the intervening Monday is a state holiday requiring the Agency to add 24 hours to the 120 hour time period for a total of 144 hours. Therefore, the earliest cut-off for receipt of bids is 3 PM on the following Wednesday.

- 6.4.4 A potential bidder may protest an addendum within 15 days of its issuance, which is one reason why the Agency must not issue an addendum less than 120 hours prior to the date for receipt of bids. Otherwise, the time period to protest the addendum could extend beyond the time period to protest an award (10 day period). Moreover, this 120 hour period gives potential bidders the opportunity to digest and accurately price the addendum.
- 6.4.5 The Agency may issue an addendum postponing the date for receipt of bids or withdrawing the invitation for bids at any time prior to the time set for bid opening.
- 6.4.6 When the Agency does issue an addendum to reschedule a bid opening, OSE recommends that the Agency schedule the new bid opening date no less than 5 calendar days from the issue date of the addendum.
- 6.4.7 The bid documents notify potential bidders requesting plans to provide contact information, including an email address, to the party providing the plans. The Agency or its representative must retain this contact information in order to notify plan holders of addenda.
- 6.4.8 If an agency conducts a mandatory pre-bid conference, the Agency must send addenda to all entities attending the pre-bid conference. If the Agency does not conduct a mandatory pre-bid conference, the Agency should send addenda to all plan holders of record.
- 6.4.9 The bid form has a location for bidders to acknowledge receipt of addenda.

## 6.5 BID POSTPONEMENT

- 6.5.1 The Agency may postpone a bid opening for any of the following reasons:
  - A. Causes beyond the control of the bidders (e.g. flood, fire, accident, weather conditions);
  - B. Emergency or unanticipated events that interrupt normal government operations;
  - C. Revision of specifications and/or drawings; or
  - D. When postponement is clearly in the best interest of the State.
- 6.5.2 The Agency may postpone bids by issuing an addendum any time prior to the time set for the bid opening. If there is not enough time to issue a written addendum prior to the time set for the bid opening, the Agency must notify bidders by telephone or other appropriate means followed with a written addendum. If possible, the Agency should verify with bidders their receipt of the notice of postponement.
- 6.5.3 When time permits, the Agency must advertise notification of the postponement of bids in SCBO.
- 6.5.4 The addendum should notify the bidders of the postponement of the original bid date and establish a new bid date. The new bid date should be at least five days after the original bid date.

## 6.6 BID CANCELLATION

- 6.6.1 The Agency may cancel the invitation for bids by written addendum at any time prior to the time set for the bid opening.
- 6.6.2 The Agency may issue the addendum as late as the time set for opening of bids. The Agency should send the addendum to all plan holders of record as soon as the agency determines that it will cancel the bid opening.
- 6.6.3 The Agency must advertise the notification of the cancellation of bids in SCBO.

## 6.7 BID OPENINGS

### 6.7.1 Receipt of Bids Prior to Bid Opening

- A. The Agency must keep all bids (including modifications) it receives before the time of opening secure and unopened. However, the Agency's Procurement Officer or their designee may open unidentified bids solely for the purpose of identification.
- B. If a person opens a sealed bid by mistake, they should immediately write their name and position along with their signature on the envelope and deliver it to the Agency's Procurement Officer. This official must reseal the envelope and write on it an explanation of the opening, the date and time opened, the project number and their signature.

### 6.7.2 Public Opening of Bids

#### A. TIME FOR CONDUCTING BID OPENING

- 1. The Agency must publicly open bids at the time set forth in the SE-310 as the Bid Closing time.
- 2. In the event of a force majeure preventing the Agency from receiving bids, the Agency may postpone the bid opening until the next business day at the time originally specified.

**B. BIDS RECEIVED AFTER DEADLINE FOR RECEIPT**

1. The Agency must receive bids at the address indicated in the SE-310 and published in SCBO before the time for bid opening. If the indicated address is served by a central mailroom, delivery of bids sent by mail or other special delivery service (UPS, FED-EX, etc.) to that mailroom is sufficient.
2. The Agency must reject bids not delivered at the indicated location or the Agency mailroom before the time of the bid opening.
3. The Agency should return any bid it rejects for being late to the bidder unopened.
4. If, after the bid opening, the Agency discovers a bid delivered at the location for delivery or the mailroom before the time for bid opening, the Agency must open and consider the bid. In such event, the Agency must document the circumstances in writing and place it in its procurement file.

**C. CONDUCTING THE BID OPENING**

1. At the time set for the bid opening, as indicated on the SE-310 or as modified by addendum, the procurement officer should declare that the time for receipt of bids has arrived and that they will no longer accept bids. The Agency must reject all bids received after this time and return them to the bidders unopened.
2. After declaring the arrival of the bid closing time, the Procurement Officer should publicly give their name and the names of the witnesses and record this information on the bid tabulation sheet.
3. The Procurement Officer should then open timely bids individually and read them in the presence of one or more witnesses. When only one bidder submits a timely bid, the procurement officer should open the bid and read it aloud.
4. The Procurement Officer should read aloud and record on a bid tabulation sheet the following information from each bid:
  - a. The Name of the bidder;
  - b. Compliance with bid security requirements;
  - c. Acknowledgment of all addenda;
  - d. Base Bid amount;
  - e. Alternate bid amounts, if requested;
  - f. Names of all subcontractors listed for the Base Bid, if requested; and
  - g. Names of all subcontractors listed for the Bid Alternates, if requested.
5. If the Agency receives multiple bids within the same envelope, it should accept only the lowest responsive bid.

**6.7.3 Conclusion of Bid Opening**

After reading bids, the Agency should thank the bidders for submitting bids and make the following announcements:

- A. The date and location of the posting of the Notice of Intent to Award (SE-370), as set forth in the AIA Document A701-1997, Instruction to Bidders - SCOSE Version (A701).
- B. After posting, the Agency will send a copy of the SE-370 and the bid tabulation to each bidder within 10 working days of the bid opening.

**6.8 BID WITHDRAWAL, MODIFICATION, OR CORRECTION****6.8.1 Withdrawal or Modification of Bids before Bid Closing**

- A. At any time before the time of the bid closing, a bidder may modify or withdraw their bid.
- B. A bidder's modification to their bid must be made on the bid form prior to the time of bid opening.

**6.8.2 Withdrawal or Correction of Bids after Bid Closing**

- A. Except in limited circumstances, bidders may not withdraw or modify their bids in the period after the time of the bid closing but before the time for bid acceptance.
- B. The Agency should require a bidder requesting permission to withdraw or correct their bid during this period to submit the request in writing. All decisions to permit correction or withdrawal of bids must be supported by a written determination of appropriateness made by the State Engineer or, if the project is within Agency certification, the Agency Head.

### C. CORRECTION:

1. Correction to bids after bid opening may cause bidders and the public to question the integrity of state procurements and may be prejudicial to fair competition. Nonetheless, the Consolidated Procurement Code does permit approval of requests to correct a mistake in bid after bid opening in limited circumstance.
2. The following applies to a request to correct a bid after bid opening due to a mistake made:
  - a. Correction is allowable in the unlikely event that the lowest responsive and responsible bidder requests a downward correction in bid price due to a mistake in bid. The rules that follow do not apply to such a request.
  - b. With the exception of a. above, a mistake in judgment is never correctable.
  - c. A mistake of fact (error in transcription, clerical error, etc.) is correctable under the following limited circumstances:
    - 1) The mistake must be one that will clearly cause the bidder substantial loss and
    - 2) The correction must not be prejudicial to the interest of the State or fair competition.
      - a) If the bidder requesting correction is not the low bidder and the correction will make the bidder the low bidder, the mistake and intended bid must be clearly evident from examining the bid document.
      - b) A bid that is nonresponsive on its face is never the low bid; therefore, the mistake and intended bid must be clearly and unambiguously evident from examining the bid document in order to allow a correction that will make the bid responsive.
      - c) If the bidder is the low bidder and is requesting an upward correction to his bid that if allowed will not change his position as low bidder, then:
        - (1) The mistake and intended bid must be:
          - (a) clearly evident from examining the bid document; or
          - (b) apparent from an examination of clear and convincing evidence presented by the bidder.
        - (2) The corrected bid must be significantly lower than the next lowest bid so as not to create the perception in the minds of reasonable people that the bidder is attempting to game the system by seeking to recover the difference between his bid and the next lowest bid.
        - (3) The request must not be one to correct multiple mistakes.<sup>1</sup>
        - (4) The requestor must not have a history of requesting bid corrections.<sup>2</sup>
3. Any request to correct a bid due to mistake must be made before performance.
4. A low bidder requesting an upward correction to his bid based on evidence other than the bid document must:
  - a. Provide the following documentation in support of his claim of mistake:
    - 1) A complete copy of his bid takeoff marked confidential.
      - a) All portions of the bid takeoff prepared by hand or typewriter must be provided in the original format.
      - b) All copies of those portions of the bid takeoff prepared on a computer must be accompanied by:
        - (1) an audit record, acceptable to the party reviewing the request for correction, showing the time, date, and nature of every change, up to the time of bid closing, made to those portions of the bid takeoff on which the bidder is relying to prove his claim of mistake and to prove his intended bid;

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<sup>1</sup> Multiple mistakes, each of which will cause substantial loss, may raise the public perception that the bidder has intentionally built mistakes into his bid to use to his advantage after bid opening. Even if this is not in fact what the bidder has done, multiple unrelated mistakes in a bid, each of which will cause substantial loss, is an indication of extreme carelessness on the part of the bidder causing one to question the responsibility of the bidder. Provided the bidder meets the requirements for withdrawal of bid, permitting the bidder to withdraw his bid due to mistake is the better approach in such cases.

<sup>2</sup> A history of requesting corrections indicates the bidder, either negligently or intentionally, has a reckless disregard for the integrity of the State Procurement system and fair competition.

- (2) a description of the bid preparation program used by the bidder, including the name and edition of the software and information to provide the reviewer with an understanding of how the bidder prepares his bids using the program.
- 2) If the mistake involves a mistake by the bidder related to a subcontractor's bid, the subcontractor's bid as received by the bidder along with evidence showing that the bid was received by the bidder before bids were due to the agency.
- b. If required by the person reviewing the request, consent to an independent audit of any computer generated document including an audit of the software used, the hard drive of the computer and/or server on which the bid was prepared, which audit is to be provided at bidder's cost.
- 5. All statements by bidder and other individuals supporting the request for correction must be upon personal knowledge given under oath under penalty of perjury.

#### D. WITHDRAWAL

- 1. A bidder's request to withdraw a bid due to mistake must document the fact that the bidder's mistake is clearly an error that will cause him substantial loss.
- 2. Though there is no South Carolina case on point, the common law standard is that the mistake must be a clerical mistake as opposed to a judgment mistake, and actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the bid and original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.
- 3. Historically, such documents were prepared by hand making their authenticity more reliable. Today, it is normal for bids to be prepared on a computer and the evidence of authenticity without digital forensics is not reliable. Therefore, the bidder must certify by affidavit under penalty of perjury that the documents provided in support of its claim of mistake are either original work papers, documents, and materials or true and accurate copies of original computer data on which its bid was actually based.
- 4. If the Agency allows a bidder to withdraw their bid because of the bidder's mistake, the decision to do so must be supported by a written determination of appropriateness by the State Engineer or his designee or, if the project is within Agency certification, the head of the Agency or his designee.
- 5. If the Agency allows a bidder to withdraw their bid because of the bidder's mistake, the Agency must return the bid security to the bidder. In the case of an electronic bid bond, the Agency does not need to take any action to return the security.

#### E. RETENTION OF BID SECURITY

- 1. If a bidder withdraws their bid without the Agency's approval or refuses to enter into a contract, then the Agency must retain their bid security.
- 2. If the security is a bid bond, the Agency should make a claim on the bond in accordance with the bonds provisions.

### 6.9 IMMEDIATELY AFTER BID OPENING

After the bid opening, but before posting of the SE-370, the Agency needs to verify the following:

- 6.9.1 The bid security, in the form of AIA A310, is at least 5% of the base bid and accompanied by a signed power of attorney.
- 6.9.2 The surety company is licensed to operate in South Carolina and has a minimum financial rating in AM Best listing of A (any A is acceptable, including A---). See "Website Verification for Surety Companies" found in Appendix I of this manual.  
**NOTE:** To check the authenticity of an electronic bid bond, go to the Surety2000 web site ([www.surety2000.com](http://www.surety2000.com)) to register (as Owner/Obligee) and follow the links to match the electronic bid bond number provided on the bid bond. In this case, also check the listed surety company as described above.
- 6.9.3 The apparent low bidder and all listed subcontractors have the proper South Carolina Contractor's licenses to execute a contract for the project.
- 6.9.4 The lowest responsive bidder has met the other requirements specific to the project, as listed in the solicitation documents.

## 6.10 DETERMINATION OF BIDDERS' RESPONSIVENESS

### 6.10.1 Bid Irregularities that are Cause for Rejection

Reasons for which the Agency must reject bids as non-responsive include, but are not limited to, the following:

- A. Bidder's failure to attend a mandatory pre-bid conference and/or a mandatory site visit;
- B. Bidder's failure to deliver the bid on time;
- C. Bidder's failure to provide the required bid security, except as allowed by law;
- D. Bidder's failure to include a properly executed power of attorney with its bid bond;
- E. Bidder's failure to bid an alternate, except as allowed by law;
- F. Bidder's failure to list subcontractors as required by law;
- G. Bidder's qualification of their bid by materially modifying the bid form or listing material exceptions to the requirements of the solicitation;
- H. Bidder's delivery of their bid directly to the Agency or its representative via facsimile machine; or
- I. Bidder's failure to include in the bid envelope all material items required by the bid documents.

### 6.10.2 Minor Informalities that are Not Cause for Rejection

- A. The Agency should not reject bids for minor informalities (irregularities) in the bid.
- B. In such cases, the Agency may ask the bidder to correct the defect or where it is advantageous to the State, the Agency may waive the requirement.
- C. The Agency's request to correct or the determination to waive must be in writing.
- D. If the Agency asks the bidder for a correction of a minor informality and bidder fails to do so, the Agency may reject the bid as non-responsive.
- E. Minor informalities in the bid include, but are not limited to, the following:
  - 1. Bidder's failure to write "Sealed Bid Enclosed" on the outside of the mailing envelope;
  - 2. Bidder's failure to seal the bid envelope;
  - 3. Bidder's listing of a modification to the bid amount on the outside of the bid envelope provided such modification does not reveal the bidder's bid price before the bid opening (however, such modifications will only be considered to the extent permitted by law);
  - 4. Bidder's failure to list information on the envelope other than that which may be required by law;
  - 5. Bidder providing a fax copy or other reproduction of any or all bidding documents in the bid envelope;
  - 6. Bidder's failure to indicate for an alternate "ADD" or "DEDUCT", but only when the adjustment to the base bid is obvious;
  - 7. Bidder providing additional listings of "Subcontractor Specialty" beyond those listed on the bid form;
  - 8. Bidder's failure to sign the bid, but only if:
    - a. the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of that authorization, and the bid carries that signature; or
    - b. the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;
  - 9. Bidder providing a reproduction of a signature on any or all bidding documents;
  - 10. Corporate Bidder's failure to include its seal on the bid;
  - 11. Bidder's failure to sign the bid bond but only if the bond has been properly executed and signed by the bonding company or agent; and
  - 12. Immaterial variations from the exact requirements of the bidding documents.

### 6.10.3 Failure to Provide Required Bid Security

- A. A bid that does not include the bid security required by the SE-310 is non-responsive and the Agency must reject it.
- B. Each bid in excess of \$50,000 must include in the bid envelope either a certified cashier's check or a bid bond payable to the Agency (the Agency must be named as the obligee) in an amount not less than five percent of the Base Bid. Personal checks or letters of credit are not acceptable.

- C. Copied or faxed bid bonds and Powers of Attorney are acceptable, but must be included in the bid envelope.
- D. The Agency must give a bidder submitting a bid security that is not in the required amount or written by a surety not meeting the required surety rating and financial strength one working day from the bid opening to cure the deficiency.
- E. A working day closes at the time of day the Agency's facility that receives the bids normally closes.

#### **6.10.4 Failure to Acknowledge Addenda**

The Agency must reject a bid where the bidder failed to acknowledge all addenda unless:

- A. The bid received indicates in some way that the bidder received the addendum(a), such as where the addendum(a) added another item to the solicitation and the bidder submitted a bid on it, if the bidder states under oath that it received the addendum(a) before bidding and that the bidder will stand by its bid price; or
- B. The addendum(a) has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an addendum(a) correcting a typographical mistake in the name of the governmental body.

### **6.11 DETERMINATION OF BIDDER'S RESPONSIBILITY**

Before posting the SE-370, the Agency must satisfy itself that the prospective contractor meets the State's Standards of Responsibility.

#### **6.11.1 Criteria for Determining Responsibility**

Criteria the Agency should use in determining whether the contractor meets the State's Standards of Responsibility include whether the contractor has:

- A. The appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to meet all contractual requirements;
- B. A satisfactory record of performance;
- C. A satisfactory record of integrity;
- D. The necessary legal qualifications to contract with the State (includes being properly licensed);
- E. Supplied all necessary information in connection with the inquiry concerning responsibility; and
- F. No record of debarment from participation in construction projects in past 3 years from any state or Federal agency as recorded in the federal government's System for Award Management (SAM). This can be found at <https://www.sam.gov/portal/SAM>.

#### **6.11.2 Verify Proper Contractor Licensing and License Limitations:**

- A. Before posting the SE-370, the Agency must verify that the prospective contractor and their listed subcontractors have the proper contractor's license and license limitations and they were in effect at the time of bidding.
- B. If the Agency determines that a prospective contractor or one of their listed subcontractors does not have the proper license and license limitations, the Agency must declare the prospective contractor is non-responsible. The Agency should notify the SC Contractors' Licensing Board that the contractor or subcontractor is offering to perform work without a proper license. The Agency may contact the Contractors' Licensing Board at: <http://www.llr.state.sc.us/POL/Contractors/>.

#### **6.11.3 Related Resources for use in Determining Responsibility**

- A. If an Agency is uncertain about a prospective contractor's responsibility, it should require the prospective contractor to complete the Questionnaire for Contractors (SE-350) and provide any other information the Agency may need to support its determination.
- B. The Agency should complete the project/Agency information on the SE-350 and send it to the contractor by certified mail with return receipt requested. The Agency may also send the form via email to expedite the process, but the hard copy must still be mailed.
- C. Upon receipt of the SE-350 and other requested information from the prospective contractor, the Agency should verify the information contained therein together with any other information available to the Agency, to determine if the prospective contractor is deficient in one or more way.
- D. If a prospective contractor is determined to be responsible, then the Agency may proceed with submitting to OSE the Request for Concurrence in Posting Notice of Intent to Award (SE-360).
- E. Right of Nondisclosure: Except as otherwise provided by SC law, the Agency must not disclose bidder furnished confidential information outside of the offices of SFAA, the Office of the Attorney General, OSE, or the Agency without prior written consent by the bidder.



#### **6.11.4 Action upon Determination of Non-Responsibility**

##### **A. WRITTEN DETERMINATION**

1. If the Agency determines a prospective contractor, to whom it would have otherwise awarded a contract, to be non-responsible, it should prepare a written determination to that effect. The written determination must:
  - a. Be prepared by the Agency's Procurement Officer;
  - b. Set forth the basis of the finding of non-responsibility; and
  - c. Be made part of the agency's procurement file.
2. The Agency should promptly send a copy of its determination to the non-responsible bidder and to OSE.

##### **B. AWARD TO NEXT LOWEST BIDDER**

The Agency may proceed with awarding the contract to the next lowest responsive and responsible bidder by submitting to OSE the SE-360 for that bidder.

#### **6.12 TIE BIDS**

If two or more bidders are tied in price, while otherwise meeting all of the required conditions, the Agency must award the project as follows:

- 6.12.1 When the tie is between a South Carolina firm and an out-of-state firm, award the project to the South Carolina firm;
- 6.12.2 When the tie involves a business certified by the South Carolina Office of Small and Minority Business Assistance as a Minority Business Enterprise (MBE) award the project to the MBE.
- 6.12.3 When the tie is between South Carolina firms, award the project to the South Carolina firm located in the same taxing jurisdiction as the project's location; and
- 6.12.4 When the tie is between South Carolina firms in the same taxing jurisdiction as the project's location, award the project by the flip of a coin witnessed by the procurement officer and all interested parties.

#### **6.13 REQUIRED BID TABULATION**

6.13.1 The Agency must prepare a final Bid Tabulation consisting of the following information:

- A. Project name and number;
- B. Agency name;
- C. Names of the persons opening bids and the witnesses, each of whom must initial the Bid Tabulation sheets;
- D. List of all contractors submitting bids;
- E. Acknowledgment of addenda;
- F. Inclusion of proper bid security;
- G. Base Bid amount(s);
- H. Bid Alternate amounts, if requested; and
- I. Listing of subcontractors for Base Bid(s) and Alternate(s), if requested; and
- J. If the Agency declared any bid to be non-responsive or non-responsible, the reasons for that declaration.

6.13.2 The Agency must provide OSE a copy of the Bid Tabulation along with the SE-360.

#### **6.14 EXTENDING BID EXPIRATION PERIOD**

- 6.14.1 If the Agency desires to extend the bid expiration period beyond the time given in the Bid Form, then it should obtain a written extension of bid prices(s) from the lowest several bidders before the expiration of that period.
- 6.14.2 A bidder does not have to agree to hold its bid price beyond the bid expiration period; however, the Agency should consider for award only the bids of those bidders who provide a written extension of their bids before the expiration of the original bid expiration period.
- 6.14.3 If the Agency fails to obtain a written extension of at least one bid before the end of the expiration period, it will have to re-bid the project before it can award a contract.

#### **6.15 REJECTION OF ALL BIDS**

6.15.1 Unless there is a compelling reason to reject one or more bids, the Agency must award to the lowest responsible and responsive bidder.

- 6.15.2** The Agency may cancel the invitations for bids after opening, but prior to award, if the procurement officer determines in writing that:
- A.** Inadequate or ambiguous specifications were cited in the invitation;
  - B.** Specifications have been revised;
  - C.** The supplies or services being procured are no longer required;
  - D.** The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
  - E.** Bids received indicate that a less expensive article differing from that on which the bids were invited can satisfy the needs of the State;
  - F.** All otherwise acceptable bids received are at unreasonable prices;
  - G.** The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
  - H.** For other reasons, cancellation is clearly in the best interest of the State.
- 6.15.3** The Agency must state the reasons for canceling an invitation for bids in its determination.
- 6.15.4** The Agency must post a copy of the determination on the date and at the location given at the bid opening for the posting of the SE-370.
- 6.15.5** The Agency must also mail a copy to all bidders, along with their bid security, and to OSE.

## **6.16 RE-BIDDING PROJECTS**

- 6.16.1** If the Agency rejects all bids, it may re-bid the project provided it significantly modifies the scope of the construction documents or delays re-bidding by up to or beyond three months, depending on what's in the best interest of the State. The Agency must advertise the project for re-bid just as it did for bid.
- 6.16.2** When re-bidding a project, the Agency must add the word "RE-BID" before the Project Name on the SE 310. If scope changes are made, the Agency must modify the project description in the SE-310.
- 6.16.3** For contracts exceeding Agency construction certification, the Agency must submit the new SE-310 to OSE in MS Word format for approval and advertisement in SCBO.

## **6.17 PERMITTED NEGOTIATIONS AFTER UNSUCCESSFUL BIDDING**

- 6.17.1** If bids exceed available funds, the Agency may negotiate with the lowest responsive and responsible bidder when it determines in writing that:
- A.** Circumstances will not permit the delay required to re-solicit competitive sealed bids; and
  - B.** The low bidder's base bid, less any deductive alternates, does not exceed available funds by more than ten percent of the construction budget established for that portion of the work.
- NOTE:** The "available funds" are considered to be the Total Approved Project Funding (Line 1 of Budget on page 2 of the SE-310) less any amount already committed by the Agency (i.e. A/E fees, equipment, etc.). The "construction budget" is the Construction Budget for this Contract (Line 2 of Budget on page 2 of the SE-310). The calculation then becomes:
- Step 1: Calculate 10% of "construction budget".
  - Step 2: Determine the "available funds" and add it to the Step 1 value.
  - Step 3: If the "low bidder's base bid, less any deductive alternates" is less than the total in Step 2, negotiation is allowed.
- 6.17.2** In negotiations, the Agency may change the scope of the work to reduce the cost to be within the established construction budget. However, the Agency may not reduce the cost below the established construction budget by more than ten percent, without a written request by the Agency and the written approval of the State Engineer. The Agency's request must be in the best interest of the State.
- 6.17.3** The Agency may not accept or use substitution of listed sub-contractors as a means to negotiate a reduction in the contract amount.
- 6.17.4** Upon completion of successful negotiations with the contractor, the Agency must submit the following to OSE along with the SE-360:
- A.** The written determination declaring the reason(s) for negotiation; and
  - B.** A description of the changes made to the scope of the project.

## 6.18 INSUFFICIENT FUNDS AUTHORIZED BY FORM A-1

The Agency may not award a construction contract for a PIP project unless the most recently approved Form A-1 authorizes unencumbered funds sufficient to cover the full amount of the contract plus construction contingencies.

## 6.19 NOTICE OF INTENT TO AWARD

### 6.19.1 Requirement of Posting

- A. Once the Agency determines that the lowest responsive and responsible bid is within available funds and has concurrence of OSE, it must post the SE-370. The Agency shall post this notice at the location stated in the AIA A701-SCOSE and announced at the bid opening.
- B. Even if the Agency received only one bid, it must post the SE-370.
- C. On the day of posting, the Agency must send a copy of the SE-370 with the bid tabulation to all bidders.

### 6.19.2 OSE Concurrence with Posting

- A. If the proposed contract value exceeds the Agency's construction contract certification, OSE must concur in the posting of the SE-370.
- B. For such contracts, the Agency must provide the bid and responsibility determination documents supporting award of a contract to the proposed awardee. The Agency must make this submittal using the SE-360.
- C. At a minimum, the Agency must submit copies of the following documents along with the SE-360 to OSE:
  - 1. The lowest responsive and responsible bidder's Bid Form;
  - 2. Contractor licenses, if required, for the low responsive and responsible bidder and his listed subcontractors (found at <https://verify.llronline.com/LicLookup/LookupMain.aspx>. Select the category "Contractors – Commercial" or, if applicable, "Burglar Alarm, Fire Alarm & Fire Sprinkler" and follow the instructions.)
  - 3. If any other bidder submitted a lower bid but was determined to be non-responsive or non-responsible a copy of:
    - a. That bidder's Bid Form, and
    - b. A statement setting forth the basis for disqualifying such bidder;
  - 4. The low responsive and responsible bidder's bid security with power of attorney;
  - 5. The final bid tabulation;
  - 6. A copy of the proposed SE-370; and
  - 7. A copy of the sample Contract to be executed by the parties;
- D. OSE will have five working days from the date of receipt of the SE-360 and all required documentation to notify the Agency of any defect in their documentation or, based on that documentation, any apparent defect in their bid opening procedures or determination of responsiveness and responsibility.
- E. If the Agency does not receive a response from OSE within five working days from the date OSE receives the SE-360 and all required documentation, OSE will be deemed to have granted approval for the Agency to post the SE-370.
- F. To submit by email, the Agency must email the OSE Project Manager and the OSE administrative assistant PDF copies of the SE-360 and all required documentation.

## 6.20 CONTRACT EXECUTION WAITING PERIOD

- 6.20.1 Unless the Agency received only one bid, it must wait ten (10) days after posting the SE-370 before it may enter into a contract with the lowest responsive and responsible bidder. If only one bid is received, and that bid is determined to be responsive and responsible, the protest period is waived.
- 6.20.2 During this time, any bidder who disagrees with the Agency's decision as to who is the lowest responsive and responsible bidder may protest the contract award.
- 6.20.3 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.
- 6.20.4 If the State Engineer does not receive any protests, the Agency may enter into the contract on the eleventh day after posting the SE-370.

**6.21 SUBMITTING THE CONTRACT TO CONTRACTOR FOR EXECUTION**

- 6.21.1** Once all conditions precedent to executing a contract have occurred, the Agency should submit a completed contract to the Contractor with a cover letter requiring the Contractor to execute the contract and return the original to the Agency within seven days.
- 6.21.1** The Contractor shall also be required to provide the Agency with the following documents within three days after submitting the signed contract:
- A.** Certificate(s) of insurance in the form of the latest edition of the ACORD 25S showing that the Contractor has insurance in place for the project that meets the requirements of Article 11 of the SC Division of Procurement Services, Office of the State Engineer Version of AIA Document A201-2007 General Conditions of the Contract for Construction or any different amounts required by the project specifications;
  - B.** The Performance Bond (SE-355) with executed Power of Attorney; and
  - C.** The Labor & Material Payment Bond (SE-357) with executed Power of Attorney.

**6.22 REVIEWING CERTIFICATE OF INSURANCE AND PERFORMANCE AND PAYMENT BONDS**

- 6.22.1** After receiving the certificates of insurance and performance and payment bonds from the contractor, the Agency should review them to determine that they are authentic and meet the requirements of the Procurement Code, Regulations and the contract.
- 6.22.2** The Agency is responsible to assure that it has the required labor and material payment bond in place before signing the contract and permitting the Contractor to start work. Failure to do so could make the Agency liable for the contractor's failure to pay its subcontractors and suppliers.
- 6.22.3** After confirming that all bonds and insurance are valid and in place, the Agency shall sign the contract and send one original copy back to the contractor and one copy to OSE for their files.

**6.23 RETURN OF BID SECURITY AND DISPOSITION OF BIDS**

- 6.23.1** Except for the three lowest responsive and responsible bidders, the Agency should return the bid securities of all other bidders within 10 days after the date of the bid opening. Upon execution of a contract, the Agency shall return the bid securities of the three lowest bidders.
- 6.23.2** The Agency must retain all bids until it has a fully executed contract. The Agency must retain the bid of the successful bidder in its procurement file.

## CHAPTER 7

### CONSTRUCTION CONTRACT ADMINISTRATION

#### DESIGN-BID-BUILD

#### 7.1 RELATED STATUTORY AUTHORITY

- 7.1.1** SC Code § 11-35-1220 permits the Chief Procurement Officer to prescribe forms for requisitioning, ordering and reporting supplies, services and construction.
- 7.1.2** SC Code § 11-35-3030 permits a maximum of 3.5% of progress payments to be retained pending completion of the work.
- 7.1.3** SC Code § 11-35-3040 permits clauses providing for adjustment in prices, time of performance and other appropriate contract provisions.
- 7.1.4** SC Code § 11-35-3060 requires all construction contracts, including contract modifications, to be within the project's scope and budget as approved by the State Fiscal Accountability Authority (SFAA).
- 7.1.5** SC Code § 29-6-30 requires an agency to pay to a contractor the undisputed amount of any pay request within 21 days of receipt of the pay request. The law further requires that the contractor pay its subcontractors, and each subcontractor shall pay their subcontractors, within 7 days of receipt by the contractor or subcontractor. This law applies to all state contractors, including design professionals.
- 7.1.6** SC Code § 29-6-40 provides grounds on which the agency, contractor, or subcontractor may withhold application and certification for payment.
- 7.1.7** SC Code § 29-6-50 permits a contractor to assess interest in the amount of one percent per month of the unpaid, undisputed amount of a periodic or final pay request not paid within 21 days of receipt of the pay request, providing written notice is given as required. Furthermore, a subcontractor may assess interest in the amount of one percent per month of the unpaid undisputed amount of a periodic or final pay request not paid within 7 days after the contractor's receipt of periodic or final payment, providing notice is given as required.

#### 7.2 BUILDING/CONSTRUCTION PERMIT

- 7.2.1** The Agency must issue the Building/Construction Permit (SE-580) to the contractor for all construction awards, whether within or over the Agency construction certification, prior to construction.
- 7.2.2** If the proposed contract value is within the Agency's construction contract certification, the Agency shall insert the applicable information in the spaces provided on the SE-580, sign the Agency Certification and Approval, and provide a copy to the Contractor.
- 7.2.3** If the proposed contract value exceeds the Agency's construction contract certification, the Agency shall insert the applicable information in the spaces provided on the SE-580, sign the Agency Certification and submit it to OSE along with the Inspection/Material Testing Order (SE-955) and the Statement of Responsibilities for Special Inspections (SE-962). OSE will sign the SE-580 and return a signed copy to the Agency.

#### 7.3 INSPECTION AND TESTING SERVICES

- 7.3.1** Chapter 1 in each of the International Code Council Series of Codes and Chapter 17 of the International Building Code require inspections by agencies or individuals approved by the Building Official. Moreover, testing of materials is typically a requirement of the contract documents to ensure the materials provided by the contractor are in accordance with the design intent.
- 7.3.2** OSE has entered into statewide term contracts for inspection and material testing services with the ultimate goal of ensuring the construction of facilities is performed in accordance with building codes and contract documents. The requirements and procedures for using inspection and material testing services on a project are set forth in Appendix G. Statewide term contracts for inspection and material testing services, including services and fees, may be found at <https://procurement.sc.gov/files/contracts/bldginsp-s40%20june%2028%202018.pdf>. The listing of Inspection and Testing Firms under statewide contract, including point of contact, phone numbers, and addresses, may be found at <https://procurement.sc.gov/files/2018%20Inspections%20Testing%20Firms.xls>.
- 7.3.3** The Agency must submit the Inspection/Material Testing Order (SE-955) with the proposed SE-580 to OSE prior to issuing the Notice to Proceed (SE-390).
- 7.3.4** Inspection and testing firms shall use the Project Inspection/Material Testing Log (SE-965), and the Project Inspection/Material Testing Deficiency Log (SE-966) found in Appendix G of this manual.

## 7.4 PRE-CONSTRUCTION CONFERENCE

- 7.4.1** The Agency should hold a pre-construction conference for all contracts exceeding \$50,000 in value. Items to consider for discussion during the pre-construction conference are located in Appendix B.
- 7.4.2** The Agency's Project Representative and the A/E's Project Manager should conduct the pre-construction conference. Other attendees should include the Agency's construction Project Manager (if assigned), construction inspectors, general contractor, major subcontractors and the inspector(s) hired by the agency.
- 7.4.3** The Agency must give the OSE Project Manager a minimum of seven days' notice of the date, time, and place of any pre-construction conference. If the OSE Project Manager believes circumstances warrant their attendance, they will notify the Agency. Alternatively, if the Agency desires the OSE Project Manager's attendance, the Agency should notify them.
- 7.4.4** The Agency should provide for the keeping and distribution of the meeting minutes to all attendees. The Agency may assign this duty to the A/E by contract.

## 7.5 INSPECTIONS

- 7.5.1** During the construction period, OSE and any other legally constituted authority has access to the project premises for periodic inspections.
- 7.5.2** The A/E's Basic Services may include site visits and observations of work-in-progress, Substantial Completion inspections, Final Completion inspections and other inspections per the A/E contract. Details of the A/E's observation requirements are set forth in the A/E contract.
- 7.5.3** The Agency must ensure that inspections and material testing services required of the owner by the contract documents are performed and documented.

## 7.6 NOTICE TO PROCEED

- 7.6.1** The Agency must issue the SE-390 to the contractor on all contract awards whether within or over the Agency construction certification. The SE-390 shall not be issued until the Building/Construction Permit (SE-580) has been issued.
- 7.6.2** The Agency must use the date of commencement established in the SE-390 for determining the date(s) of Substantial Completion and Liquidated Damages. The Date of Commencement should be set at least 7 days after the date of the SE-390 to allow the Contractor time to mobilize its work forces. This time may be waived if approved by the contractor.
- 7.6.3** The Agency must send a copy of the SE-390 along with copies of the executed contract, performance and payment bonds, and certificate of insurance to OSE, for information only, on the same day it sends the SE-390 to the contractor.

## 7.7 CONSTRUCTION SCHEDULES

- 7.7.1** The Contractor is responsible for providing a construction schedule for the Agency and A/E's information. The contract documents should define the required level of detail. At a minimum, the schedule should:
- A.** Indicate dates for Commencement, Substantial Completion, and Final Completion;
  - B.** Provide a graphical representation of the major events to occur on the project, including coordination of the project with the work of others, if any;
  - C.** Provide a graphical representation of each phase of construction and occupancy; and
  - D.** Indicate dates that are critical to the project.
- 7.7.2** The Agency should make sure that the contractor updates and maintains the schedule as required by the contract documents.

## 7.8 SHOP DRAWINGS

- 7.8.1** The Contractor is responsible for preparation of shop drawings that are required by the contract documents. The contract documents set forth the details for shop drawing submittal, review, and approval.
- 7.8.2** Fire Sprinkler System Shop Drawings
- A.** The Fire Protection Engineer of Record (EOR) shall submit a completed form, Request for Fire Sprinkler System Shop Drawing Review for State Construction Projects, to the OSE Project Manager for signature. This form can be found at:  
<http://scfiremarshal.llronline.com/Engservices/Forms/Request%20for%20Fire%20Sprinkler%20System%20Shop%20Drawing%20Review%20for%20SCP%202018.0601.pdf>

- B. The OSE Project Manager will sign and return the form to the EOR. The EOR shall then include the signed form with the shop drawing submittal to the Office of State Fire Marshal.
- C. Beginning July 1, 2018, all shop drawings for state projects shall be submitted using this form.

## 7.9 EVALUATION OF SUBSTITUTIONS

- 7.9.1 The Contractor may submit requests to provide materials and equipment different from that specified in the Contract Documents.
- 7.9.2 The Agency has the sole discretion to accept or reject any of these requests. The contract documents provide details for request submittal, review, and approval.

## 7.10 SUBSTITUTION OF SUBCONTRACTORS

### 7.10.1 Substitution of Unlisted Subcontractors

- A. A Contractor should not engage the services of a prospective subcontractor against whom the Agency or the General Contractor has made a reasonable and timely objection.
- B. A Contractor may substitute one prospective subcontractor for another, with the approval of the Agency as follows:
  - 1. If the Contractor requests the substitution, the Contractor is responsible for all costs associated with the substitution.
  - 2. If the Agency requests the substitution, then the Agency is responsible for any resulting increased costs to the Contractor.

### 7.10.2 Substitution of Listed Subcontractors

- A. A Contractor may substitute a listed Subcontractor only under conditions allowed by SC Code § 11-35-3021. In considering a request for substitution, the Agency should consider prior interpretations of this statute by the Procurement Review Panel and the Chief Procurement Officer for Construction.
- B. Panel decisions are located at <https://procurement.sc.gov/legal/legal-panel-orders> . CPOC decisions are located at <https://procurement.sc.gov/legal/legal-decisions-ose>. Of particular interest is the Panel's decision in Protest of Pizzagalli Construction Company, Case No. 1991-8 wherein the Panel ruled that substitution under § 11-35-3020(2)(b)(iii) [now § 11-35-3021] is only allowed when the facts giving rise to the request for substitution occur after contract award.
- C. For further discussion see footnote 3 in Protest of Melloul-Blamey Construction SC LTD, Case No. 2008-003A (Before the CPOC). In Melloul-Blamey, the CPOC stated that the circumstances set forth in SC Code § 11-35-3020(2)(b)(iii)(bb) & (cc) [now § 11-35-3021] may be exceptions to the rule announced in Pizzagalli.

## 7.11 CHANGE ORDERS

### 7.11.1 General Information

- A. A change order is any written amendment to a construction contract to which all parties agree.
- B. A change order normally modifies one or more of the following elements of the contract:
  - 1. Scope of Work
  - 2. Contract Sum
  - 3. Contract Time
- C. Under no circumstances may the contractor proceed with the work of a change order until the Agency approves it.
- D. If the amount of the change order exceeds the limit of the Agency's construction change order certification, OSE must authorize the change order before the contractor may perform any work.
- E. The parties shall process change orders using the Change Order to Construction Contract (SE-380).

### 7.11.2 Change Order for Contracts within Agency Construction Contract Certification

- A. When the original construction contract is within the Agency's construction contract certification limit (as determined by Department of Procurement Services (DPS) Auditors, process change orders as follows:
  - 1. If the change order does not cause the total construction contract amount to exceed the Agency's construction contract certification limit, then the Agency may authorize the work. The agency does not need to notify OSE of these change orders.



2. If the change order causes the total construction contract amount to exceed the Agency's construction contract certification limit, then OSE must approve the change order before the Contractor may perform any work. The Agency must submit the change order to OSE, along with copies of the following:
    - a. The approved Form A-1 (if the project is required to be established as a PIP);
    - b. Last detailed cost estimate prepared before bidding;
    - c. The SCBO advertisement; and
    - d. Bidding Documents, including addenda.
  3. OSE and the Agency will thereafter administer the construction contract as a contract that originally exceeded the Agency's construction contract certification limit.
- B.** Nothing in this provision allows an Agency to issue a change order that will cause a small purchase as defined in Chapter 8 to exceed the limits for the type of procurement method used (i.e. a contract under \$2,500 made without obtaining competitive quotes may not be converted to a purchase in excess of \$2,500).

### **7.11.3 Change Orders for Contracts above Agency Construction Contract Certification**

- A.** When the original construction contract award exceeds the Agency's construction contract certification limit, process change orders as follows:
1. If the Change Order has any item or change in work exceeding the Agency's construction change order certification limit, then OSE must authorize the change order before the contractor can perform any work. The agency must send the change order (both deduct and adds), along with all substantiating data noted in subparagraph B below, to OSE for review and approval.
  2. If the change order has all items or changes in work within the Agency's construction change order certification limit, the Agency may authorize the work. The agency must send a copy of the change order, along with all substantiating data noted in subparagraph B below, to OSE for information within 30 days of the Agency's authorization of any item included in the change order.
- B. Substantiating Data:** The Agency must submit substantiating data containing the following:
1. One copy of the completed change order;
  2. One copy of supporting cost and schedule data including the following:
    - a. Sufficient detail to explain the scope of work covered by the change order (attach plans, specifications, details, written description, adjustments in cost with back-up information, and quantities of material and labor as required for explanation);
    - b. Contractor's justification for adjustment in the contract sum including properly itemized and substantiating data with sufficient detail to show the following:
      - (1) That the cost involved is both fair and reasonable to all concerned;
      - (2) That the cost is appropriately related to the quantities of materials and labor involved including material invoices and subcontractor(s) costs, and
      - (3) That the amount of the contractor's markup (overhead and profit) is as indicated in the contract.
    - c. Justification for increasing the time of the contract using information to verify weather-related or other delays not controlled by the contractor.

### **7.11.4 Failure to Obtain OSE Review and Authorization**

- A.** Failure to obtain OSE authorization for a change order, when required by agency certification limits, results in the change order being an unauthorized procurement requiring termination or a justification for ratification.
- B.** Failure to submit Agency-approved change orders for OSE information within the time specified in 7.8.3.A.2 could result in the Agency having to have the contractor perform corrective work on the project in an untimely manner to bring the project into compliance with code requirements.

### **7.11.5 Determining if a Change Order is Within Agency Certification**

- A.** DPS - Audit and Certification web page contains a link at the bottom of the page to a listing of Agency construction change order certifications. The web page is located at <https://procurement.sc.gov/agency/resources-and-forms/cert-limits>.
- B.** To determine whether the Agency or OSE can authorize the work:
1. The value of a change order item is the total cost required to complete an individual item of work. For example: installation of a drinking fountain may take mechanical, electrical, plumbing, carpentry, painting, and wall covering installation to complete the individual work item.
  2. The value of the individual item determines whether OSE authorization is required.
  3. The value determination applies to any change in work whether it deducts or adds to the contract amount.



- C. The Agency may not break down a change order into separate, related items of work to circumvent the requirement for authorization by OSE. For example, an Agency may not break a change order adding a parking lot to a contract down into separate items such as one for grading and one for paving.

## **7.12 CHANGE ORDERS: DELAYS AND TIME**

- 7.12.1** The Agency must promptly evaluate a contractor's claim for time to avoid claims for acceleration and damages.
- 7.12.2** The Agency must document any adjustment in contract time by change order. Except in the case of continuing delay, the Agency must execute the change order within 14 days after the contractor submits written notice of the claim for additional time, provided that:
  - A. Any request for adjustment of time includes written substantiation and justification for the change; and
  - B. The A/E has provided written justification concerning the time claimed.
- 7.12.3** A claim for time should include any associated costs and the effect the delay will have on the progress of the work. Only one claim is necessary when an on-going delay is evident during a project.
- 7.12.4** The Agency should not convert change directives to change orders until time claims and contract values are resolved.
- 7.12.5** The Agency must send a change order for time to OSE for information.

## **7.13 CHANGE DIRECTIVES**

### **7.13.1 General Information**

- A. A change directive allows the Agency to direct the contractor to make urgently needed changes in the scope of the contract documents without completing the change order process described above.
- B. In the event that time is of the essence, the use of a change directive may provide relief for the time that it may take for the Agency and the contractor to reach full agreement on the cost or time impact of a change in scope.
- C. A change directive must be in writing and should suggest the method the Agency proposes for determining any adjustment to the contract sum and time.
- D. The Agency may issue a change directive using AIA Document G714.
- E. An agency may issue change directives as necessary. The Agency's construction change order certification limit does not apply.
- F. The Agency should use a change directive rather than a change order in all cases where there is a lack of total agreement between the Agency and the contractor on the cost and schedule impact of all item(s) contained in a change to the work.
- G. When a change directive provides for an adjustment to the contract sum, the parties must make final adjustment in accordance with the change order provisions of the contract.
- H. Portions of a change directive that are not in dispute may be included in the contractor's applications for payment prior to the change directive being converted to a change order.
- I. The Agency should number change directives sequentially and separately from change orders.

### **7.13.2 Submittals**

- A. If the Agency or A/E estimates that the change directive will exceed the Agency's construction change order certification, the Agency, after signing the directive, must submit it to OSE. The Agency must include attachments and documentation with sufficient detail to provide an explanation of the scope of work that is in the change directive.
- B. The Agency must submit the change directive to OSE at the same time it issues the change directive to the contractor.
- C. OSE will review the change directive for any impact on compliance with building codes and other State standards. OSE will communicate any concerns raised by this review to the Agency.

### **7.13.3 Converting Change Directive to Change Order**

- A. When the Agency and the contractor have negotiated a final agreement on the adjustments to the contract sum and the contract time related to the change directive, they must convert the change directive to a change order.
- B. The parties should reference the change directive in the change order and attach the change directive to the change order.
- C. The Agency must process the change order as set forth in paragraph 7.8.

## **7.14 RESOLUTION OF CONSTRUCTION CLAIMS AND DISPUTES BETWEEN CONTRACTOR AND AGENCY**

### **7.14.1 Claims Handled by the A/E**

- A.** As part of its Basic Services, the A/E acts as the initial interpreter of the requirements of the construction documents, providing information to the Agency and the contractor concerning the acceptability of the work.
- B.** The party making a claim must submit the claim in writing to the A/E as required by the contract documents. The party must support their claim with adequate documentation.
- C.** The A/E will review claims as required by its contract with the Agency, and either approve or reject claims by providing a written decision, giving reasons for the decision.
- D.** The A/E will notify those involved of any recommended changes in the contract sum or contract time.
- E.** If the A/E's initial decision is acceptable to the Agency and the contractor, the parties must prepare a change order as outlined in the contract documents. The Agency must process the change order as outlined in paragraph 7.8.
- F.** If the A/E's initial decision is not acceptable to the Agency or the contractor, the Agency should first attempt to resolve the claim by mutual agreement. The State Engineer strongly urges that the Agency and the contractor use every available means to resolve all claims through negotiations and informal mediation. OSE Project Managers are available to assist.

### **7.14.2 Claims Handled by OSE**

If the Agency or the contractor makes a claim after the Agency's approval of the contractor's final payment, the claimant must submit the claim directly to the State Engineer.

## **7.15 CLAIMS BY OTHERS**

**7.15.1** The Contractor is responsible for resolving all claims between its suppliers and subcontractors. If the contractor requests assistance, the Agency should assist the contractor, suppliers, or subcontractors in resolving their disputes.

**7.15.2** When the Agency becomes aware that the contractor is not paying suppliers or subcontractors, the Agency should discuss this with the contractor and notify the surety company. If requested by the Agency:

- A.** The Contractor should provide justification for not paying the subcontractor or supplier; and
- B.** The A/E should render an opinion to the Agency as to the Contractor's justification for the lack of payment to a subcontractor or supplier.

**7.15.3** The Agency should cooperate with the surety in responding to claims of non-payment from subcontractors and suppliers.

**7.15.4** Pending resolution of claims by others, the Agency should consider withholding appropriate sums from payments to the contractor if such withholding is required to protect the interests of the State. However, the Agency must follow the terms and conditions of the contract in withholding any payments.

## **7.16 DISPUTES OR UNRESOLVED CLAIMS**

**7.16.1** Only the Agency, the A/E and its direct consultants, and the Contractor and its direct subcontractors are entitled to submit a request for resolution of a contract controversy to the State Engineer.

**7.16.2** A party submitting a dispute to the State Engineer for resolution must do so in accordance with SC Code § 11-35-4230. See Chapter 1 of this manual.

## **7.17 APPLICATION AND CERTIFICATION FOR PAYMENT**

**7.17.1** The contractor should submit applications for payment to the A/E in the form of AIA Documents G702 and G703. If the Agency is not using an A/E or other outside consultant, the contractor should submit its pay applications directly to the Agency.

**7.17.2** The A/E will review the contractor's application for payment and accompanying progress schedules and other back-up information. Based on the A/E's on-site observations, the A/E will determine the amounts due the Contractor and submit recommendations for payment in writing to the Agency.

**7.17.3** After review and certification of the amounts due the Contractor, the A/E will send the applications for payment to the Agency.

## 7.18 PROGRESS PAYMENTS TO CONTRACTORS

- 7.18.1** When a contractor has performed in accordance with the provisions of its contract, the Agency must pay the contractor the undisputed amount of any pay request within 21 days of the Agency's (or A/E's) receipt of that pay request. The contractor shall pay to his subcontractor(s) and each subcontractor(s) shall pay to his subcontractor(s), within seven days of receipt by the contractor or subcontractor of each periodic or final payment. The law considers the A/E's receipt of the pay request as the equivalent of the Agency's receipt since the A/E is acting as the Agency's representative.
- 7.18.2** If the Agency delays payment to a Contractor by more than 21 days, the Agency must pay the contractor interest, beginning on the due date, at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due. However, the Agency will owe interest ONLY if the contractor notified the Agency in writing that such interest might be due at the time the contractor requested payment.
- 7.18.3** The Agency may request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amount paid by the Owner to the Contractor for their portion of the work. If the Contractor fails to furnish such evidence within seven days, the Agency may contact Subcontractors to ascertain whether they have been properly paid.

## 7.19 WITHHOLDING PAYMENT TO CONTRACTORS

- 7.19.1** In addition to any retainage stated in the contract for construction, the Agency may withhold additional amounts as required to protect the interests of the State. Reasons for additional withholding are set forth in the contract.
- 7.19.2** When the Agency has determined to its satisfaction that unsatisfactory job progress has caused or will cause the actual contract time to exceed the specified (or adjusted) contract time, and if the contract includes a provision for assessing actual or liquidated damages, payment shall be withheld from the contractor in amounts necessary to cover the anticipated damages.
- A. Such amounts to cover damages for late completion are in addition to retainage, the balance for incomplete work and any amounts withheld for other reasons stated in the contract.
  - B. Actual or Liquidated Damages to be assessed a contractor are NOT to be incorporated into a change order, as they are not changing the value of the contract. They are only to be listed as a line item deduction from the amount paid on the pay application.
  - C. The Agency shall use the Assessment of Contract Liquidated Damages (SE-395) to calculate and document the amount of Liquidated Damages charged to the contractor.
- 7.19.3** When re-inspection and/or re-testing services are required due to construction discrepancies or failures by the contractor, the re-inspection and/or re-testing fees are NOT to be incorporated into a change order, as they are not changing the value of the contract. They are only to be listed as a line item deduction from the amount paid on the pay application.

## 7.20 RETAINED AMOUNTS OF PROGRESS PAYMENTS (RETAINAGE)

- 7.20.1** In any contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the Agency may not retain more than 3.5% of each progress payment.
- 7.20.2** Upon final completion of the work, the Agency must include in the final payment to the contractor, retained amounts of progress payments not previously released.

## 7.21 SUBSTANTIAL COMPLETION

### 7.21.1 General

- A. The A/E should declare substantial completion only if construction is sufficiently complete, in accordance with the contract documents, such that the Agency can occupy or utilize the project (or a portion) for the use for which it is intended.
- B. The work remaining for the contractor to complete after substantial completion should be minor in nature such that it will not disrupt the occupants unduly or prevent them from carrying out their normal functions.
- C. The Contractor is responsible to correct work that the A/E or Owner rejects for failure to conform to the requirements of the contract documents, whether they discover such non-conforming work before or after Substantial Completion.

### 7.21.2 Inspections for Substantial Completion

- A. The Agency shall give OSE a minimum of ten (10) days' notice of the date, time and place of the Substantial Completion inspection so that the OSE Project Manager may attend.

- B. Where applicable, the following individuals should be present for the inspection, unless the Agency waives their attendance:
  1. A/E's Architect of Record;
  2. Agency's Project Manager;
  3. Mechanical Engineer of Record;
  4. Electrical Engineer of Record,
  5. Fire Protection Engineer,
  6. Other design professionals as applicable;
  7. Local Fire Marshal's representatives; and
  8. Other authorities having jurisdiction.
- C. If additional Substantial Completion inspections are required, the Agency may charge the Contractor for all costs of re-inspection. These charges are NOT to be incorporated into a change order, as they are not changing the value of the contract. They are only to be listed as a line item deduction from the amount paid on the pay application.

#### **7.21.3 Declarations of Substantial Completions**

- A. The A/E may declare Substantial Completion by issuing the Certificate of Substantial Completion (SE-550), signed by the Agency and the A/E.
- B. The parties should indicate on the certificate the number of days allowed until final completion.
- C. The Agency must submit a copy of the fully completed SE-550 to the contractor and OSE.
- D. Issuance of the SE-550 terminates the Agency's right to impose Liquidated Damages (if any) and establishes the beginning date for the warranties and the one-year corrective work period.
- E. The Agency must obtain permanent insurance on the work from the Insurance Reserve Fund as soon as it and the A/E issue a certificate of substantial completion.

## **7.22 CERTIFICATE OF OCCUPANCY/USE**

### **7.22.1 Requirements for Obtaining a Certificate of Occupancy/Use**

- A. The Agency shall complete and submit to the OSE Project Manager the Certificate of Occupancy/Use (SE-585) for any building or structure that is constructed or renovated with state funds, or a project that is built on state property. The State Engineer or his designee will approve the SE-585.
- B. The Agency must obtain an SE-585 for all projects for which OSE requires a Building/Construction Permit (SE-580). Agencies must coordinate with OSE to determine if an SE-580 and SE-585 are required for a specific project.
- C. The Agency may not use any building or project or change an occupancy classification for any building requiring an SE-580 until the State Engineer has issued the SE-585.
- D. The State Engineer will approve the SE-585 upon completion of the following:
  1. The OSE Project Manager receives and accepts all A/E and independent inspector inspection reports, including the SE-966 with all deficiencies resolved;
  2. The A/E provides copies of tests to the Agency (and OSE as requested) for the following (unless provided throughout the project):
    - a. Fire sprinkler system (properly completed NFPA 13, 24 and others, as applicable),
    - b. Mechanical equipment,
    - c. Plumbing (including domestic water sanitary testing report)
    - d. Fire Alarm (properly completed latest edition of NFPA 72 form),
    - e. Electrical,
    - f. Emergency power,
    - g. Structural,
    - h. Soil, and
    - i. Other testing that may be listed in the contract documents;

3. The A/E and Agency have received all items that are required for Substantial Completion (see paragraph 7.18) per the contract documents; and
  4. The A/E inspects the building or structure and determines the construction to be in accordance with the Contract Documents.
- E. The State Engineer or his designee may, in their sole discretion, issue a Temporary or Partial Certificate of Occupancy/Use before the entire work is complete upon receipt of:
1. Certification by the Agency, A/E, and contractor that such portion of the work is safe for occupancy, and
  2. Agreement by the project manager, after a review of the project.

#### **7.22.2 Revocation of a Certificate of Occupancy**

The State Engineer has the authority to suspend or revoke the SE-585 if:

- A. The certificate is issued in error;
- B. The certificate is issued on the basis of incorrect information supplied; or
- C. It is determined that the building or structure (or a portion thereof) is in violation of any part of the building codes.

### **7.23 RECORD DOCUMENTS**

**7.23.1** At the end of the project, the Agency should receive from the A/E one set of record documents (including reproducible plans that reflect all changes that are on the contractor-provided “red line” drawings and specifications) and warranty/guaranty information.

**7.23.2** The Agency should refer to the A/E’s contract and the construction contract for details on these drawings.

### **7.24 FINAL COMPLETION**

**7.24.1** When the contractor believes his work is completed, he shall submit the Certificate of Final Completion (SE-560) to the A/E and request a final inspection. Upon receipt of the SE-560, the A/E will:

- A. Survey the work to verify that the project is ready for final inspection;
- B. If they disagree with the contractor’s assessment of the status of the project, notify the contractor accordingly;
- C. If they agree with the contractor’s assessment of the status of the project, schedule a final completion inspection with the Agency and contractor.

**7.24.2** The A/E will perform the final completion inspection, along with those attending the inspection and, if the results are acceptable, the A/E and Agency will sign the SE-560 and declare that the project is finally complete.

### **7.25 CONTRACT CLOSURE AND FINAL PAYMENT**

**7.25.1** Closure of the construction contract, including final payment to the Contractor, requires the following:

- A. An SE-560 issued by the A/E and accepted by the Agency;
- B. The Contractor’s submission, to the A/E, of the following:
  1. An affidavit, in the form of the AIA G706, that wages, bills for materials and equipment, and other indebtedness connected with the work have been paid.
  2. A certificate in the form of AIA G715 issued by an authorized representative of the contractor’s insurance company certifying completed project insurance coverage as required by the contract documents;
  3. A statement that the Contractor knows of no reason that the completed project insurance will not be renewable to cover the period required by the Contract Documents;
  4. Consent of surety, if any, to final payment, in the form of AIA G707;
  5. Other information required by the Agency establishing the Contractor’s payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims and security interests arising out of the contract, all in the forms as designated by the Agency;
  6. Inspection reports that may not be a part of the record documents;
  7. Redline drawings showing the as-built conditions;
  8. Warranties;
  9. Operation and maintenance manuals; and
  10. A final payment application.

7.25.2 Upon final completion and the Agency's receipt and approval of the contractor's final payment application, the Agency must pay the contractor all funds remaining due, including all amounts retained from progress payments.

**7.26 ONE-YEAR CORRECTIVE WORK PERIOD**

7.26.1 The contractor is contractually bound to correct all deficiencies noted within one year after the date of substantial completion.

7.26.2 Based on the requirements of the agreement between the Agency and the A/E, the Agency should have the A/E inspect the project ten months after substantial completion for any deficiencies that may have developed during the one year period after substantial completion.

7.26.3 Upon completion of the inspection, the A/E should issue a written report to the Agency, OSE, and the contractor indicating deficiencies the contractor must correct.

7.26.4 Upon receipt of the report, the contractor is obligated to correct the noted deficiencies.

7.26.5 Failure by the Agency to perform this inspection, prior to the end of the one-year period after substantial completion, could void any recourse for correction of latent deficiencies by the contractor or any enforcement under the Performance Bond.

**7.27 PROJECT CLOSE-OUT**

7.27.1 When an Agency determines that a PIP project is complete, the Agency shall submit a Form A-1 to the Capital Budgeting Unit for approval to close out the project.

7.27.2 When an agency determines that a Non-PIP project is complete, the Agency shall submit written notification to OSE to close out the project.

## CHAPTER 8

### MISCELLANEOUS PROCUREMENTS

#### 8.1 RELATED STATUTORY AUTHORITY

- 8.1.1 SC Code § 11-35-540 permits SFAA to promulgate regulations, to approve agencies internal operational procedures for procurement, and to audit and monitor agencies procurement procedures.
- 8.1.2 SC Code § 11-35-1550 permits agencies to procure small purchases in accordance with regulations established by SFAA.
- 8.1.3 SC Code § 11-35-1560 permits the Chief Procurement Officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer, to authorize in writing a sole source procurement.
- 8.1.4 SC Code § 11-35-1570 permits the Chief Procurement Officer, the head of a purchasing agency, or a designee of either officer to authorize emergency procurements.
- 8.1.5 SC Code § 11-35-2440 requires that all sole source procurements and emergency procurements be reported to the appropriate Chief Procurement Officer.
- 8.1.6 SC Code § 11-35-3030 requires governmental bodies to obtain labor and material payment bonds on any contract to improve real property if the contract is valued in excess of \$50,000.
- 8.1.7 SC Regulation 19-445.2105 sets forth standards for sole source procurements.
- 8.1.8 SC Regulation 19-445.2110 sets forth standards for emergency procurements.

#### 8.2 TYPES OF MISCELLANEOUS PROCUREMENTS

- 8.2.1 Small Purchases
- 8.2.2 Sole Source Procurements
- 8.2.3 Emergency Procurements

#### 8.3 SMALL PURCHASES

- 8.3.1 **Protest Rights:** Protest rights do not apply to contracts awarded under the Small Purchase procedures set forth in this section.
- 8.3.2 **Limits for Small Purchases:**
  - A. Small purchases are limited to an amount of \$50,000 or less.
  - B. Each agency may have additional internal procedures that further limit the authority to make small purchases. The Agency's internal procedures should be verified with their procurement officer.
  - C. Sales tax is not included in the purchase price when determining the method of procurement.
- 8.3.3 **Competition Requirements:** The specific requirements on the agency to obtain competition for small purchases depend on the amount of the awarded contract or purchase order.
  - A. PURCHASES OF \$2,500 OR LESS:
    - 1. Agency may make small purchases with a total cost of \$2,500 or less without getting competitive quotes. For approved Higher Education Institutions, this limit is \$10,000.  
Note: For approved Higher Education Institutions, SC Code § 11-35-1550 was amended effective August 5, 2011 to raise the small purchase limit for procurements without receiving quotes to \$10,000. All Universities are approved by the statute to use this higher limit. Each Technical College must receive approval from the State Board for Technical and Comprehensive Education to use the higher limit. No other small purchase limits were changed.
    - 2. The Agency should distribute these purchases equitably among qualified suppliers. Unless it is impractical, the agency should solicit bids from other suppliers before giving the previous supplier a repeat order.
    - 3. The Agency should make the purchase on a purchase requisition form provided by the Agency's procurement officer.
    - 4. The procurement officer or his designee must annotate the purchase requisition with the words "Price is fair and reasonable" and sign it.

5. The Agency is only required to verify the reasonableness of the price when the procurement officer of the agency suspects that the price may not be reasonable, e.g., by comparison to the previous price paid or personal knowledge of the item involved.
- B. PURCHASES OVER \$2,500 BUT LESS THAN OR EQUAL TO \$10,000:**
1. The Agency must solicit written quotes from a minimum of three qualified sources of supply. The Agency must award to the lowest responsive and responsible source. (See Chapter 6 for more information on the evaluation of a bidder's responsiveness and responsibility.) This provision does not apply to approved Higher Education Institutions.
  2. The Agency should make the purchase on a purchase requisition form provided by the agency's procurement officer, with the following attached in the agency file:
    - a. Documentation of the quotes; and
    - b. A statement documenting that the procurement is to the advantage of the State (price and other factors considered), including the administrative cost of the purchase.
- C. PURCHASES OVER \$10,000 BUT LESS THAN OR EQUAL TO \$50,000:**
1. The agency must advertise for written bids in SCBO under the "Minor Construction" section.
  2. The Agency must award to the lowest responsive and responsible source. (See Chapter 6 for more information on the evaluation of a bidder's responsiveness and responsibility.)
  3. The Agency should make the purchase on a purchase requisition form provided by the agency's procurement officer, with the following attached in the agency file:
    - a. A copy of the written solicitation and written bids; and
    - b. A statement documenting that the procurement is to the advantage of the State (price and other factors considered), including the administrative cost of the purchase.
- 8.3.4** Agencies should not use the Small Purchase procedures when the anticipated award price is greater than approximately \$45,000. In the event the lowest responsive and responsible bid is greater than the \$50,000 small purchase limit, the agency will be required to cancel the solicitation and re-bid using the competitive sealed bidding process described in Chapter 6.

## **8.4 SOLE SOURCE PROCUREMENTS**

### **8.4.1 Agency's Authorization of Sole Source Procurements:**

- A. The Agency must determine for itself that there is only one source for the required service or construction.
- B. The chief procurement officer, the head of the Agency or their designee above the level of the agency's procurement officer, must authorize the sole source procurement.
- C. The Agency must document, in writing, its determination that there is only one source for the service or construction and its authorization for the purchase.
- D. The Agency must place a copy of its written determination in its procurement file.
- E. The Agency's determination is subject to protest.
- F. All Sole Source Procurements will be audited by Audit and Certification.

### **8.4.2 OSE Code Review:**

OSE must review, for building code compliance, the design and construction of Sole Source Procurements that exceed an Agency's construction procurement certification.

### **8.4.3 Basis and Procedure for Sole Source Procurements:**

See SC Regulation 19-445.2105 for the basis of making a sole source procurement and the requirements for the determination that a sole source procurement is necessary.

### **8.4.4 Bid Security, Bonds and Insurance for Sole Source Procurements:**

- A. The Agency need not require bid security for a sole source procurement; however, the agency must require the contractor to provide a performance bond and labor and material payment bond when the sole source procurement is for construction greater than \$50,000.
- B. The agency may waive bonding requirements for construction contracts under \$50,000, if they have protected the interests of the State.
- C. The contractor must provide the standard contractor's insurance policies.
- D. See Chapter 6 for detailed information concerning bond and insurance requirements.



**8.4.5 Change Orders or Amendments to Sole Source Procurements:**

- A. The Agency may only authorize change orders to meet a change in scope, time, or cost directly related to the sole source procurement.
- B. The Agency may not use change orders to add additional procurements that the Agency can obtain from other qualified sources.
- C. If the Agency does authorize any change orders, they must submit them to OSE marked “Sole Source Procurement – For Information Purposes Only.”
- D. OSE will neither acknowledge receipt of this documentation nor approve the changes.

**8.4.6 Reporting Sole Source Procurements:**

- A. The Agency must submit a quarterly report of all sole source procurements to the Materials Management Office (MMO) as directed by Audit and Certification at the following link: <https://reporting.procurement.sc.gov>.
- B. The Agency must also submit construction-related sole source procurements to OSE on the form MMO/OSE-102, within 10 days of contract award. The Agency must submit the contract documents to OSE marked “Sole Source Procurement – For Information Purposes Only.”
- C. OSE will neither acknowledge receipt of this documentation nor approve the purchase.

**8.5 EMERGENCY PROCUREMENTS****8.5.1 Agency Authorization of Emergency Procurements**

- A. The Agency must determine for itself the need for an emergency procurement.
- B. The chief procurement officer, the head of the Agency or their designee must make or authorize an emergency procurement. The Agency may only make an emergency procurement when there is an immediate threat to public health, welfare, critical economy and efficiency, or safety.
- C. The Agency must document, in writing, the emergency condition and the circumstances or events that resulted in the emergency condition.
- D. The Agency must place a copy of its written determination in its procurement files.
- E. The Agency’s determination to proceed with an emergency procurement is subject to protest.
- F. All Emergency Procurements will be audited by Audit and Certification.

**8.5.2 OSE Code Review**

OSE must review, for building code compliance, the design and construction of Emergency Procurements that exceed the Agency’s construction procurement certification. OSE will expedite this review.

**8.5.3 Permanent Improvement Project Approval**

If the emergency procurement results in a project meeting the definition of a Permanent Improvement Project, the Agency must submit the project to SFAA immediately for approval.

**8.5.4 Basis and Procedure for Emergency Procurement**

See S.C. Regulation 19-445.2110 for the requirements for an emergency purchase and for the determination that an emergency purchase is necessary. See Sloan v. DOT, Opinion No. 26534 (S.C. 2008) for the definition of an emergency as set forth by the South Carolina Supreme Court. You may find the Supreme Court’s decision at: [http://procurement.sc.gov/files/Sloan\\_v.\\_DOT.pdf](http://procurement.sc.gov/files/Sloan_v._DOT.pdf)

**8.5.5 Emergency When Competitive Sealed Bidding is Unsuccessful**

- A. Whenever competitive sealed bidding is unsuccessful and the Agency determines that an emergency exists because time or other circumstances will not permit the delay required to re-solicit competitive sealed bids without a significant negative impact on the ability of the agency to fulfill its mission, then the Agency may negotiate a contract as follows:
  1. The Agency must notify each responsible bidder who submitted a bid under the original solicitation in writing of the agency’s determination and give each such bidder a reasonable opportunity to negotiate.
  2. The Agency must conduct such negotiations independently and may not share any information regarding the preliminary or best and final offers of any bidder with other bidders.
  3. The Agency may award a contract if:
    - a. The final negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation; and
    - b. The final negotiated price is the lowest offered by any responsible and responsive offeror.

- B. An Agency considering negotiation of a construction contract under a declared Emergency should contact OSE for guidance.

#### **8.5.6 Bonds and Insurance**

- A. The Agency must require the contractor provide a performance bond and labor and material payment bond when the emergency procurement is for construction of \$50,000 or more.
- B. The Agency may waive bonding requirements for construction under \$50,000, if they have protected the interests of the State.
- C. Insurance provided by the contractor or A/E is required on all Emergency Procurements.
- D. See Chapter 6 for additional information concerning bond and insurance requirements.

#### **8.5.7 Change Orders or Amendments to Emergency Procurements**

- A. The Agency may only authorize a change order to meet a change in scope, time, or cost specifically related to the conditions or circumstances that justified the emergency procurement.
- B. The Agency may not use change orders to add additional procurements that are not necessary to respond to the emergency.
- C. If the Agency does authorize any change orders, they must submit them to OSE marked "Emergency Procurement - For Information Purposes Only."
- D. OSE will neither acknowledge receipt of this documentation nor approve the changes.

#### **8.5.8 Reporting Emergency Procurements**

- A. The Agency must submit a quarterly report of all emergency procurements to the Materials Management Office (MMO) as directed by Audit and Certification at the following link: <https://reporting.procurement.sc.gov> .
- B. The Agency must also submit construction-related emergency procurements to OSE on the OSE/MMO-103 within 10 days of contract award. The Agency must submit the contract documents to OSE marked "Emergency Procurement – For Information Purposes Only."
- C. OSE will neither acknowledge receipt of this documentation nor approve the purchase.

## 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.



## CHAPTER 10

### REAL PROPERTY

#### 10.1 RELATED STATUTORY AUTHORITY

**10.1.1** SC Code §1-11-65 requires that all transactions involving real property, made for or by any governmental bodies, excluding political subdivisions of the State, must be approved by and recorded with the State Fiscal Accountability Authority.

**10.1.2** SC Code §2-47-50 requires all projects involving acquisition of real property to be established as a permanent improvement project (PIP).

#### 10.2 ACQUISITION OF REAL PROPERTY

An Agency desiring to acquire real property must work through the Capitol Budgeting Unit. For more details see Chapter 7 and referenced appendices of the Manual for Planning and Execution of State Permanent Improvements – Part I (<http://www.admin.sc.gov/budget/capital-budgeting-unit/manual>).

#### 10.3 DEMOLITION OF REAL PROPERTY

##### 10.3.1 Obtaining Approval

- A. To assure proper notification of the Insurance Reserve Fund and compliance with Title 2, Chapter 47 of the SC Code of Laws (requirements for establishment of a Permanent Improvement Project), the Agency may not demolish any buildings or other improvements until it receives written approval from the State Engineer or his designee.
  - 1. The State Engineer's approval does not substitute for nor does it absolve the Agency from obtaining other approvals required by law (e.g. Department of Health and Environment Control notification, State Historic Preservation office approval for historic structures and local zoning approvals).
  - 2. It is the Agency's responsibility to determine for itself which other requirements apply to its request and to comply with those requirements.
- B. Requests for approval to demolish real property must include the following:
  - 1. A copy of the approval of the Agency's Governing Board or Agency Head;
  - 2. A complete description of the real property to be demolished, including age, size, type of construction, use, condition, exterior and interior photographs, etc.;
  - 3. Insurance policy number and segment ID for the building;
  - 4. The reason for demolishing the real property;
  - 5. The estimated cost of demolition; and
  - 6. The source of funds.
- C. When the Agency expects the cost of demolition to exceed \$100,000 (\$1,000,000 for Higher Education), the Agency must establish a PIP before submitting the request for approval to the State Engineer, unless the demolition is a part of an established PIP.
- D. OSE will give notice of demolition of any building and/or permanent improvement to Real Property Services and the Insurance Reserve Fund.
- E. The agency must submit written notification of demolition to SCDHEC (Bureau of Air Quality) at least 10 working days before demolition begins, even if there is no asbestos present.

##### 10.3.2 Demolition in Flood Hazard Zone

- A. When a demolition project is in a flood hazard zone, the Agency must obtain a permit from OSE prior to the start of any work. The Permit to Develop in a Flood Hazard Area (SE-510) submitted by the Agency must include the requirements listed in Chapter 5 and the following information:
  - 1. Where the Agency or its contractor will store the debris and for how long;
  - 2. Where the Agency or its contractor will store the demolition equipment and for how long; and
  - 3. If the project is located in a regulatory floodway, the effects of removing the structure on base flood elevations.

## 10.4 MOVING REAL PROPERTY

**10.4.1** Any Agency wishing to move any existing building, including a modular building, onto state lands must first obtain the written approval of the State Engineer or his designee.

- A. The Agency must make all improvements necessary for the moved property to comply with the requirements of the applicable codes and standards for new structures as described in Chapter 5.
- B. The Agency must make these improvements within 90 days of the date of the State Engineer's written approval to move the property. The State Engineer may grant a time extension for matters beyond the control of the agency.

**10.4.2** The Agency's requests for approval to move real property must include the following:

- A. A description of the structure to be moved, including age, size, type of construction, condition, etc.;
- B. The location of the structure and its current use;
- C. The location (provide map) the property is being moved to;
- D. The use of the property at the new location;
- E. The estimate of cost of moving;
- F. The cost of rehabilitation of the property for its new use;
- G. Plans and specification for improvements required in order for the property to comply with all applicable codes and standards as described in Chapter 5; and
- H. The source of funds for moving and rehabilitating the property.

**10.4.3** When the Agency expects the cost of moving the structure to exceed \$100,000 (\$1,000,000 for Higher Education), it must establish a PIP before submitting the request for approval to the State Engineer.

**10.4.4** OSE will give notice of moving any building and/or permanent improvement to Real Property Services.

## 10.5 SALE OF REAL PROPERTY

**10.5.1** When any agency determines that the best method of disposal or removal of a building is by sale to the public, it must obtain approval from SFAA.

**10.5.2** The Agency must submit requests for approval to the Division of Facilities Management and Property Services - Real Property Services in the Department of Administration. Contact Real Property Services for requirements.

## 10.6 LEASE - PURCHASE ARRANGEMENTS

**10.6.1** Lease-purchases are those leases that provide for equity accrual, and eventual State ownership of the property.

**10.6.2** The procedures and requirements listed in this chapter for the acquisition of real property may also apply to lease- purchase arrangements. Because SFAA handles each lease-purchase on a case-by-case basis, the Agency should contact the Division of Facilities Management and Property Services - Real Property Services to determine the proper procedures.

**10.6.3** The Agency must assure that the lessor prepares all construction plans and specifications for all lease-purchase construction projects in the same manner and to the same standards that apply to normal state construction projects.

**10.6.4** At the time of purchase (transfer of ownership to the Agency), the Agency will have to have the property assessed in accordance with the requirements of the Capitol Budgeting Unit (see Part 10.2 above).

## 10.7 LEASING AND RENOVATION OF STATE PROPERTY BY OTHERS

**10.7.1** If the Agency intends to lease state real property to another party, the Agency must do so through the Division of Facilities Management and Property Services - Real Property Services.

**10.7.2** Any lessee intending to perform construction on or renovations to state property must do so in accordance with all applicable codes and standards described in Chapter 5. The lessee must prepare construction plans and specifications in the same manner and to the same standards that apply to normal state construction projects, and submit them to OSE for review and approval prior to construction.

**10.7.3** The Procurement Code may apply to the design and construction of any improvements to state property leased to others. Because OSE handles such leases on a case-by-case basis, the Agency must contact OSE to determine the proper procedures.

**10.8 LEASING AND RENOVATION OF NON-STATE PROPERTY BY A STATE AGENCY**

- 10.8.1** The Agency must lease non-state property through the Division of Facility Management and Property Services - Real Property Services.
- 10.8.2** If the Agency constructs on or renovates non-state property, it must procure such construction or renovation in accordance with the Procurement Code.
- 10.8.3** Construction plans and specifications for all construction projects involving non-state leased property, whether procured by the state agency or by the owner of the property, must comply with the requirements of the local building officials.

## CHAPTER 11

### CONSTRUCTION MANAGEMENT AT RISK

#### 11.1 RELATED STATUORY AUTHORITY

- 11.1.1 SC Code §§ 8-13-700 through 8-13-795 of the Ethics, Government Accountability and Campaign Reform Act of 1991 establishes the Rules of Ethical Conduct for public employees.
- 11.1.2 SC Code § 11-35-1520(3) requires notices be published in South Carolina Business Opportunities.
- 11.1.3 SC Code § 11-35-1530 outlines the use of Competitive Sealed Proposals.
- 11.1.4 SC Code § 11-35-1710 allows for solicitations to be cancelled when it is in the best interest of the State.
- 11.1.5 SC Code § 11-35-1830 addresses cost or pricing data for contracts and change orders awarded by RFP.
- 11.1.6 SC Code § 11-35-2910(2) defines the Construction manager agent as a business to provide construction management services, but not construction.
- 11.1.7 SC Code § 11-35-2910(3) & (5) defines the Construction Manager at-risk as a business and the Construction Management at risk as a project delivery method.
- 11.1.8 SC Code § 11-35-3005(3) allows firms that have participated in a report or study used in the preparation of design requirements to qualify as a member of a proposing team unless the participation provides the firm and substantial competitive advantage.
- 11.1.9 SC Code § 11-35-3010 requires the agency to make a written determination of the project delivery method that is most advantageous to the State and submit it for approval by the State Engineer.
- 11.1.10 SC Code § 11-35-3015(3) requires contracts for construction management at risk to be procured as provided in either § 11-35-1520 (Competitive Sealed Bidding) or § 11-35-1530 (Competitive Sealed Proposals).
- 11.1.11 SC Code § 11-35-3023(A) allows the prequalification of offerors.
- 11.1.12 SC Code § 11-35-3024(4) and SC Regulation 19-445.2095(G) requires the State Engineer's Office to oversee the evaluation process for the procurement of construction if factors other than price are considered in the evaluation of a proposal.
- 11.1.13 SC Code § 11-35-3030(4) limits the amount of retention that can be withheld from progress payments to three and one-half percent.
- 11.1.14 SC Code § 11-35-3210 defines construction management agent as a construction related professional service subject to the qualification based selection.
- 11.1.15 SC Code § 11-35-4210 defines the right of protest to a prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with a solicitation.
- 11.1.16 SC Code § 40-11-320 provides the licensure requirements for a Construction Manager.
- 11.1.17 SC Regulation 19-445.2010(C) & (D) provides that prior to award or notice of intent, state personnel shall not furnish source selection information to anyone other than the procurement officer.
- 11.1.18 SC Regulation 19-445.2095(G) through (J) provides the procedures for competitive sealed proposals and the rejection of proposals.
- 11.1.19 SC Regulation 19-445.2097(B) allows for the cancellation of a solicitation prior to award.
- 11.1.20 SC Regulation 19-445.2145(N) defines the Construction Management at Risk process.

#### 11.2 DEFINITIONS

- 11.2.1 "Construction Management at-Risk" (CM-R) is a project delivery method in which the Agency awards separate contracts, one for architectural and engineering services to design the project and the second to a CM-R for both construction management services and construction of the project facility according to the design. The CM-R is normally hired at or shortly after the time the architect/engineer (A/E) is hired and begins providing construction management services at that time. A decision and request to hire a CM-R after completion of a significant percentage of the design eliminates major potential benefits of CM-R and will be evaluated by OSE accordingly for the best interest of the State but not to unduly limit competition.
- 11.2.2 "Construction Manager Agent" (CM/A) contracts, unlike CM-R, provide only construction management services and do not assume any of the responsibility or risk for construction of the project. The Procurement Code treats CM/A as a construction related professional service subject to the qualification based selection requirements of the Procurement Code. Therefore, an Agency desiring to procure the services of a CM/A must use the procedures outlined in Chapter 4 of this manual.

- 11.2.3** “Construction management services” (CM) are the provision of the management activities required to plan, schedule, coordinate, and manage the construction plan of a project in a manner that contributes to the control of time, cost and quality of construction. CM services typically include oversight of the following:
- A. Project Schedules,
  - B. Project Cost Control,
  - C. Constructability of the Project,
  - D. Project Management,
  - E. Building Technology (e.g., building materials, equipment and systems),
  - F. Bidding and Negotiation of Construction Contracts, and
  - G. Construction.

### **11.3 SPECIAL CONSIDERATIONS FOR CM-R**

- 11.3.1** Firms seeking CM-R work must be registered both as a construction manager and as a general contractor with the SC Contractor’s Licensing Board. The CM-R’s General Contractor’s license must have a license group designation that will allow the CM-R to provide Performance Bonds and Labor and Material Payment Bonds for the full construction value of the project.
- 11.3.2** The fees awarded to both the A/E and the CM-R (for the professional services portion of the CM-R’s services) must represent fair and equitable compensation for the actual services required of each. The form and amount of compensation for the construction portion of the CM-R’s services must reflect the degree to which the Agency and the CM-R share the risks and rewards of project cost overruns and under-runs.
- 11.3.3** The Basic Services to be performed by the A/E in a CM-R delivery method varies from those performed in a Design-Bid-Build. Therefore, the contract used for the A/E services is the AIA B133, SCOSE Edition. The agency and A/E should become familiar with the services required by the B133 and negotiate accordingly.
- 11.3.4** Construction phase services are subject to the limitations on retainage in the Procurement Code.

### **11.4 SOURCE SELECTION METHOD**

- 11.4.1** The Procurement Code provides that the CM-R may be selected using either competitive sealed bidding or competitive sealed proposals; however:
- A. the use of competitive sealed bidding would require substantially complete design documents and a significantly late selection of the CM-R. Such an approach would so negate many of the primary benefits normally supporting a determination to use the CM-R project delivery method that it is hard, if not impossible, to imagine a determination that meets statutory and regulatory requirements calling for such an approach.
  - B. the industry standard is for an early selection of the CM-R using competitive sealed proposals.
  - C. this document assumes an early selection of the CM-R and only considers using the competitive sealed proposal source selection method.
- 11.4.2** The competitive sealed proposal source selection method is referred to throughout this document as the Request for Proposal (RFP) process and as discussed herein will consist of a two-phase selection process which includes both the Request for Qualifications (RFQ) and RFP procedures.
- 11.4.3** In accordance with the requirements of Chapter 3 of this manual, the Agency shall provide the State Engineer with a written determination that the use of CM-R 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 RFQ/RFP process.
- 11.4.4** The RFQ/RFP process for selecting the most qualified CM-R involves a significant amount of time by the Selection Committee. As part of their determination, an Agency should consider the time required and the level of staffing needed to make the selection process successful.

### **11.5 SELECTION COMMITTEE STRUCTURE AND STAFFING FOR THE RFQ/RFP PROCESS**

#### **11.5.1 Selection Committee Structure**

- A. The Selection Committee (Committee) consists of personnel, voting and non-voting, organized to evaluate qualifications and proposals. They will make a selection based on their evaluations and assist the Agency Project Manager in reporting their decision to the final approving authority (Agency Head or a designee) at a management level above the Agency Project Manager.

- B. The Committee is chaired by a non-voting Chairman appointed by the State Engineer and typically will the OSE Project Manager assigned to the project.
- C. Voting and non-voting committee members are selected by the Agency Head or his designee and should include the Agency Project Manager and other state employees that are qualified to evaluate the qualifications/proposals. OSE must concur with all Committee appointments.
- D. Technical advisors, usually non-voting members of the Committee, may be required to assist the Committee in the evaluation of Qualification Statements or Proposals.
- E. The Committee should be comprised of a minimum of five voting members. While there is not a maximum number of voting or non-voting members on the Committee, it should be noted that as the number of members increases, so does the difficulty to schedule Committee meetings and interviews for selection.

#### 11.5.2 Selection Committee Membership

- A. The voting members of the Committee shall 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. Committee members should become familiar with the requirements of this act and avoid any conflict of interest.
  - 1. Each Committee member must sign a Confidentiality & Conflict of Interest Policy (SE-414) as a means of confirming their acceptance of their responsibilities.
  - 2. The Agency should also have other persons involved in the decision making process sign an SE-414. For example, the Agency Head is not a member of the Committee but has final say over the Committee's decision, so they must sign a SE-414. The same is true for members of a Board of Trustees and administrative associates who assist in document preparation and handling.
- C. The Committee must comply with the Freedom of Information Act; however Committee members must not disclose confidential information derived from proposals and negotiations submitted by competing offerors during the selection process. There is a summary of the requirements of this act in Chapter 1. .
- D. There are no requirements for who may be appointed to a committee. The following could be possible committee members:
  - 1. A member of the board or commission governing the Agency;
  - 2. The Agency head (Secretary, Executive director, President, or like officer) or their designee;
  - 3. One representative of the division, department, or Program Agency for which the project is being built;
  - 4. Agency Project Manager; and/or
  - 5. Agency Facilities Director or his designee.

#### 11.5.3 Changes in Selection Committee Membership

An Agency may only make changes in the membership of the Committee with the approval of the Agency Head and OSE.

#### 11.5.4 Selection Committee Responsibilities

- A. Agency Head or their designee, acting as the final selection authority, is responsible for the following:
  - 1. Directing the Agency's efforts during the entire source selection process;
  - 2. Reviewing and approving the Selection Plan;
  - 3. Appointing members of the Committee other than the Chair; and
  - 4. Reviewing and approving the Committee's final report for selection and recommendation. The Agency Head may choose to reject the Committee's final choice by directing the Agency Project Manager to cancel the solicitation prior to award in accordance with the procedures set forth in SC Regulation 19-445.2097(B).
- B. Agency Project Manager, subject to the policies and procedures of a specific agency, is responsible for the following:
  - 1. Preparing and submitting a draft of the Selection Plan to the Committee for its review;
  - 2. Preparing and submitting the final Selection Plan to the Agency Head for concurrence and the OSE Chairman for approval;
  - 3. Assuring that each Committee Member and any other appointed participant signs and returns an SE-414 before they are provided access to source selection information;

4. Posting notices of Committee meetings in accordance with the Freedom of Information Act (FOIA) open meeting requirements;
  5. Preparing the RFQ and/or RFP outline;
  6. Coordinating the preparation and issuance of the RFQ and/or RFP with the OSE Chairman and Committee;
  7. Preparing advertisements for South Carolina Business Opportunities (SCBO) and any other publications;
  8. Issuing amendments to the RFQ or RFP with the OSE Chairman;
  9. Scheduling Selection Committee Meetings;
  10. Conducting a pre-qualification conference in accordance with established procedures, meeting minutes and attendance;
  11. Receiving and registering responding firms using the Register of Responding Firms - CM-R (SE-411);
  12. Summarizing the RFQ evaluation data from the prequalification meeting of the Committee by using the Selection Committee Report for RFQ – CM-R (SE-412);
  13. Notifying prequalified firms by using the Notification of Prequalification – CM-R (SE-413);
  14. Safeguarding confidential information and materials, including proposals and amendments;
  15. Determining offeror responsiveness and responsibility;
  16. Conducting a pre-proposal conference in accordance with established procedures, meeting minutes and attendance;
  17. Conducting or controlling all discussions and negotiations with offerors;
  18. Maintaining written records of all discussions and negotiations with offerors;
  19. Preparing the Selection Committee’s report and recommendation to the Agency Head; and
  20. Conducting the debriefing for unsuccessful offerors.
- C. The Committee Chair is a non-voting member appointed by the State Engineer. The Committee Chair’s duties include the following:
1. Assisting the Agency Project Manager in scheduling and conducting Committee meetings and deliberations;
  2. Providing overall supervision, planning direction, and execution of the Committee’s activities;
  3. Assisting the Agency Project Manager in the determination of responsibility and responsiveness on individual proposals; and
  4. Summarizing the Committee member’s raw evaluation data using the CM-R Selection Committee Summary - RFP (SE-417).
- D. Voting Members duties include the following:
1. Independently review each proposal against the Plan criteria for the RFQ and RFP;
  2. Attend all Committee meetings;
  3. Participate in the prequalification selection for the RFQ; and
  4. Participate in the interview of each prequalified firm and complete the CM-R Selection Committee Member Evaluation – RFP (SE-415) taking into account both the written technical proposal and the interview presentation weighed against the evaluation factors in the Plan.
- E. Technical Advisors, Non-Voting Members
1. The Agency Head may appoint outside technical advisors with special expertise not available on the Committee but essential to the selection process.
  2. The Agency should use Advisors in discrete areas such as reviewing technical aspects of proposals to assure compliance with the technical requirements of the RFP.
  3. The Agency should not give Advisors access to information concerning overall Committee activities that they do not need to perform their advisory duties. Advisors should attend Committee meetings as specifically requested by the Committee Chair.

#### 11.5.5 Conflicts of Interest

- A. The Committee Chair must instruct the committee members and technical advisors of the Procurement Code’s requirements for ethical conduct, and require each member to sign an SE-414 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.

- B. If a committee member has an actual or apparent conflict of interest related to a proposal under evaluation, the Chair must remove that member and, if a sufficient number of voting members do not remain, request the Agency Head to 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 Committee Chair of the relationship for a determination as to whether or not an actual conflict of interest exists.

## 11.6 SELECTION COMMITTEE MEETINGS

- 11.6.1 Every meeting of public bodies must be open to the public unless closed pursuant to SC Code § 30-4-70. A Committee is a body subject to this requirement. Every meeting of the Committee must be publicly announced at least twenty-four hours before the meeting.
- 11.6.2 When a meeting is held to discuss source selection information such as ranking statements of qualifications and proposals, the meeting will open publicly and any item on the agenda which is not protected source selection information will be addressed publicly.
- 11.6.3 Thereafter, the Committee should adjourn to go into executive session to discuss source selection information. The public must be excluded from these executive sessions with no exceptions.

## 11.7 SELECTION PLAN FOR THE RFQ/RFP PROCESS

### 11.7.1 The Selection Plan

- A. The Selection Plan (Plan) is the document that;
  1. Explains how the Agency will solicit statements of qualifications and proposals from contractors and evaluate those statements and proposals in order to make the selection decision;
  2. Establishes the required qualifications and the relative importance of those qualifications;
  3. Outlines how the Agency will conduct negotiations;
  4. Identifies the Chair and members of the Committee; and
  5. Establishes milestone dates for the completion of the selection process.
- B. The Plan is the Agency's statement to itself and to others as to how it intends to acquire what it needs. It distinguishes what is important from what is not and, by assigning weights, defines how important these distinctions are.

### 11.7.2 Minimum Requirements

The Plan must include the following, as a minimum:

- A. Description of the facility to be constructed;
- B. Description of the duties and responsibilities of the Committee. Include the nominations for Committee by attaching a roster of personnel by name, title, and agency to the Plan;
- C. Schedules and key events or milestones that will occur between the time the Committee is organized and its adjournment, including proposed pre-solicitation activities such as the drafting and issuance of South Carolina Business Opportunities (SCBO) announcements or the convening of a pre-qualifications conference or pre-proposal conference;
 

Note: The Procurement Code requires adequate public notice of the RFQ. Therefore, the Plan should address not only the publication in SCBO, but how the Agency intends to develop interest in the project other than through advertising in SCBO.
- D. The contract to be used;
- E. Statement of the RFQ and RFP evaluation factors and their relative importance; and
- F. Description of the evaluation process, methodology, and techniques;

### 11.7.3 Preparation and Approval of the Plan

- A. The Agency Project Manager prepares and submits the Plan to the OSE Chairman and Committee for review.
- B. The reviewed Plan is finalized and submitted to the Agency Head for approval.
- C. The approved Plan must be reviewed and approved by the Committee Chairman before the Agency issues a solicitation or holds a pre-qualification conference.



## **11.8 REQUEST FOR QUALIFICATIONS (RFQ)**

- 11.8.1** The RFQ is part of a pre-qualification process. Agencies shall request approval from OSE to limit participation in a solicitation for CM-R to those businesses that are prequalified.
- 11.8.2** To prequalify offerors, the Agency must determine in writing that prequalification is justified due to the nature of the project. The determination for prequalification shall be included in the written determination of project delivery method discussed above.
- 11.8.3** The decision to not prequalify a particular firm is protestable. The standard of review is the same as for a determination of non-responsibility.
- 11.8.4** If only one prospective offeror is qualified, the prequalification process must be canceled. In this event, the Agency may start the process over or publicly advertise a request for proposals from all interested parties.

### **11.8.5 Request for Qualifications**

- A.** The Agency must prepare an RFQ that will clearly communicate to potential offerors both the Agency's needs and the evaluation factors the Committee will use in evaluating a business's qualifications. The RFQ should not include the Selection Plan.
- B.** The RFQ must:
- 1.** Contain a description of the general scope of work to be acquired.
  - 2.** Advise prospective offerors how they may apply for consideration including how their statements of qualifications should be organized and arranged.
  - 3.** Inform potential offerors of the evaluation factors that the Agency will consider in evaluating statements of qualifications and their relative importance. The evaluation factors should at a minimum include:
    - a.** Past performance and references from designers and owners;
    - b.** Description of the firm's CM-R project management approach;
    - c.** Bonding capacity/financial stability; and
    - d.** Related experience on CM-R projects of similar size and scope.
  - 4.** Set forth the deadline for submission of statements of qualifications.

### **11.8.6 Solicitation**

- A.** Using the Invitation for Construction Management at Risk Services (SE-410), the Agency must advertise in SCBO for interested firms to provide pre-construction and construction management services for the project.
- B.** The Agency Project Manager will prepare the SE-410 and submit it in MS Word format to the OSE Chairman. The OSE Chairman will review the SE-410 and send an approved copy to SCBO and the agency.

### **11.8.7 Pre-Qualification Conference**

- A.** The Agency Project Manager may conduct a Pre-qualification Conference to explain the project and the requirements of the RFQ to interested firms. Conducting a pre-qualification conference at the RFQ stage may allow the Agency to gauge interest in the project, and solicit input from potential offerors regarding how best to address complex aspects of the project thus promoting competition.
- B.** When the Agency determines that a Pre-qualification conference is in its best interest, the Agency must place the notification in the SE-410.
- C.** The Agency must furnish all prospective offerors identical information in connection with the proposed acquisition. The Agency may not use remarks and explanations at the conference to modify or qualify the terms of the RFQ. If the Agency wishes to modify or qualify the terms of the RFQ, it must do so by written amendment.
- D.** The Agency must make a complete record of the conference and make the record a part of its procurement file.
- E.** The Agency Project Manager and Committee Chairman will represent the agency at the conference with the Agency Project Manager conducting the conference. All other members of the Committee should not be in attendance at the conference.

### **11.8.8 Receipt and Opening of Statement of Qualifications**

- A.** The rules governing non-disclosure of procurement and confidential information applies to the receipt of statements of qualifications.
- B.** The Agency should date and time stamp statements of qualifications upon receipt; however, unlike proposals the Agency is not required to secure and publicly open statements of qualifications.

- C. The Agency Project Manager may open statements of qualifications upon receipt and, with a witness, record the names of the firms that have responded to the RFQ and any modifications on the Register of Responding Firms for CM-R (SE-411). The Agency shall not make the SE-411 open to public inspection until after the issuance of an award or notification of intent to award, whichever is earlier.
- D. Following the registering of firms, the Agency Project Manager may immediately start performing reference checks and determining the responsiveness and responsibility of offerors.

#### 11.8.9 Evaluation and Ranking of Prospective Offerors

- A. The Committee meeting must comply with the Open Meeting requirements of law when ranking prospective offerors.
- B. The Committee must evaluate the statements of qualifications and rank prospective offerors from most qualified to least qualified. The Committee should rank firms following the evaluation factors found in the RFQ.
- C. After evaluating the statements of qualifications, the Agency Project Manager shall conduct discussions with the Committee to review the strengths and weaknesses of the firms. By consensus of the voting Committee members, the Agency Project Manager shall create a list of the firms considered to be the most qualified to participate in the RFP process.
- D. The Agency Project Manager shall prepare a written report on the Selection Committee Report for RFQ - CM-R (SE-412) to support the Committee's determination of the ranking of the firms.

#### 11.8.10 Number of Firms Pre-Qualified

- A. The Agency must solicit proposals from at least the three most qualified prospective offerors by means of a Request for Proposal. The Agency may solicit proposals from additional prospective offerors in order of ranking.
- B. The Agency's determination of how many proposals to solicit is not protestable.

#### 11.8.11 Notification

- A. After ranking prospective offerors and determining which offerors it will solicit proposals, the Agency must notify only the prospective offerors that have been pre-qualified using the Notification of Prequalification - CM-R (SE-413).
- B. The Agency Project Manager shall send a letter individually to prospective offerors that were not pre-qualified indicating the Agency's appreciation of their interest in the project, but they have not been prequalified to advance to the RFP process.
- C. Prospective offerors are notified of their status and are not notified of the status of any other prospective offeror or how many prospective offeror's submitted statements of qualifications.

### 11.9 REQUEST FOR PROPOSALS (RFP)

#### 11.9.1 The RFP

- A. The Agency Project Manager must prepare an RFP that will clearly communicate to the pre-qualified firms the Agency's needs and the evaluation factors the Committee will use in evaluating the proposals. The RFP should not include the Selection Plan.
- B. As a minimum, offerors shall be evaluated on the following factors:
  1. Qualifications of the CM-R staff to be assigned to the project;
  2. Related experience on projects of similar size and complexity;
  3. Ability to perform the requirements of the contract;
  4. History of on-time, on-budget, and on-schedule for previous CM-R projects;
  5. Proposed CM-R pre-construction and construction management fee (should be a factor of less than 10% of the ranking); and
  6. Other pertinent factors required by the Committee.
- C. The RFP must:
  1. Advise offerors on how their proposals should be organized and arranged;
  2. Provide that offerors must submit the price for Preconstruction Services and/or the Construction Management Fee (expressed as a percentage) with their proposals in a separate sealed envelope;
  3. Inform offerors of the evaluation factors for award and the relative importance assigned to each of these factors; and
  4. Include the paragraphs to be used in the RFP listed in the *Clauses for use on Construction Management At-Risk Projects*, found in Appendix C.

**11.9.2 Pre-Proposal Conferences**

- A. The Agency may conduct a pre-proposal conference to clarify the requirements of the RFP.
- B. When the Agency determines that a pre-proposal conference is in its best interest, the Agency must notify all pre-qualified firms as listed on the SE-413.
- C. At the pre-proposal conference, the Agency must furnish all offerors identical information in connection with the proposed acquisition. The Agency may not use remarks and explanations at the conference to modify or qualify the terms of the solicitation. If the Agency wishes to modify or qualify the terms of the solicitation, it must do so by written amendment.
- D. The Agency must make a complete record of the conference and make the record a part of its procurement file.
- E. The Agency Project Manager and Committee Chairman will represent the agency at the conference with the Agency Project Manager conducting the conference. No other members of the Committee should be in attendance at the Conference.

**11.10 POTENTIAL OFFEROR'S PARTICIPATION IN A REPORT OR STUDY USED IN PREPARATION OF DESIGN REQUIREMENTS**

- 11.10.1 Participation in a report or study that is used in the preparation of design requirements for a project does not disqualify a firm from participating as a member of a proposing team in a CM-R project unless the participation provides the business with a substantial competitive advantage.
- 11.10.2 A copy of a report or study that was prepared by a potential offer shall be given to all offerors.

**11.11 OPENING AND REGISTERING OF PROPOSALS**

- 11.11.1 The Agency must time-stamp proposals and modifications upon receipt and hold them unopened (except as otherwise provided in the Procurement Regulations) in a secure place until the established due date.
- 11.11.2 The Agency Project Manager must open the proposals publicly in the presence of one or more State witnesses at the time and place designated in the RFP.
- 11.11.3 The Agency Project Manager should declare the arrival of the time for receipt of proposals, and verify each of the offerors submitting a proposal are listed on the SE-413.
- 11.11.4 The Agency may not make the proposals open to public inspection until after the issuance of an award or notification of intent to award, whichever is earlier.
- 11.11.5 The Agency must not disclose the contents or the identity of competing offers during the process of opening proposals.
- 11.11.6 If members of the public appear at the opening, the Agency Project Manager should state that they will conduct the opening of proposals and verify the names in silence to protect confidential information.

**11.12 REJECTION OF PROPOSALS AND CANCELLATION OF SOLICITATION****11.12.1 Rejection of Individual Proposals**

- A. The Agency does not need to accept proposals unconditionally without alteration or correction, and to the extent otherwise allowed by law, the State's stated requirements may be clarified after proposals are submitted. The Agency must consider this flexibility in determining whether reasons exist for rejecting all or any part of a proposal.
- B. Reasons for rejecting proposals include but are not limited to the following:
  - 1. The business that submitted the proposal is non-responsible as determined under SC Code § 11-35-1810;
  - 2. The proposal ultimately fails to meet the announced requirements of the State in some material respect; or
  - 3. The proposed price is clearly unreasonable.
- C. The Agency must document the reasons for cancellation or rejection and make the documentation a part of the procurement file available for public inspection.

**11.12.2 Rejection of All Proposals – Cancellation of Solicitation Prior to Award**

- A. Unless there is a compelling reason to reject all proposals, the Agency, after receiving and opening proposals, must award a contract. Subject to the provisions of SC Code § 11-35-1530, this award must be to the highest ranked responsible offeror.

- B. Should the Agency decide to cancel a solicitation after opening proposals but before award, the Agency must determine in writing that:
  1. Inadequate or ambiguous specifications were cited in the solicitation;
  2. Specifications have been revised;
  3. The services or construction being procured is no longer required;
  4. The solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
  5. All otherwise acceptable proposals received are at unreasonable prices;
  6. The proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
  7. For other reasons, cancellation is clearly in the best interest of the State.
- C. If the determination is due to a change in requirements, the Agency must show in its determination that prior to opening, it made every effort to anticipate changes in requirements.
- D. Any determination to cancel the solicitation must be made in good faith. The Agency must document the reasons for cancellation or rejection and make the documentation a part of the procurement file available for public inspection.

## **11.13 INTERVIEWS AND RANKING OF PROPOSALS**

### **11.13.1 Interviews**

- A. No later than ten days before the interview date, the Committee should send written notice of the date and location for interviews to each individual prospective offeror.
- B. All interviews should occur on the same day.
- C. If the Committee will be interviewing the offerors in various locations, the Agency Project Manager should make sure that each location is similarly equipped and furnished.
- D. Each voting member of the Committee must be present for each interview. All non-voting members and technical advisors should be present for each interview.
- E. During the interviews, the Committee may evaluate the offerors only on the criteria listed in the RFP.
- F. The Committee must not discuss fees and compensation with the offerors during the interviews.

### **11.13.2 Ranking By Individual Committee Members**

- A. Each voting member of the Committee must examine each proposal in detail to measure its contents against the evaluation factors and assign a score to each factor.
- B. At the close of all interviews, voting Committee members must complete an evaluation of all interviewed firms using the CM-R Selection Committee Member Evaluation–RFP (SE-415) with the exception of the Cost Proposal criteria. The Agency Project Manager will open the sealed envelopes that contain the cost proposal from each firm interviewed and read them aloud. Voting members will then score the Cost Proposal evaluation criteria.
- C. If a voting committee member determines two firms to be equally qualified, the committee member must re-evaluate their rankings to break any ties in scores prior to submitting the SE-415 to the Committee Chair.
- D. Each voting member must present their signed evaluation to the Chair.

### **11.13.3 Consensus of Selection Committee**

- A. After the voting members have separately evaluated the technical proposals including the interviews for an RFP, the Committee must meet and formulate its collective conclusions. The Committee must discuss significant variations in voting members' scores or assessments of technical merit and resolve discrepancies or fully explain them in the record.
- B. After each committee member has completed and submitted their SE-415 to the Chair, the Chair will compile the scores into a Committee ranking on the CM-R Selection Committee Summary - RFP (SE-417).
- C. If the Committee determines two firms to be equally qualified:
  1. The Committee must re-evaluate their rankings to break any ties in final rankings.
  2. If one firm is a resident firm and the other is a non-resident firm, the committee must rank the resident firm higher than the non-resident firm.

### **11.13.4 Selection Committee Report and Recommendation**

- A. After the Committee reaches a consensus of the recommended firm, the Agency Project Manager must prepare a committee report for the Agency Head.

- B. The report must include the Committee's recommendation of the offeror the Agency should select for negotiation and award.
- C. The report must include a copy of each SE-415 and the SE-417 indicating the rank of each offeror's proposal. For each offeror, the report should provide the final score and a summary of each proposal including an assessment of the offeror's compliance with the requirements of the solicitation, any changes to the technical evaluation scores and a narrative to support the changes.
- D. The Committee must support a recommendation to negotiate and award to a higher priced offeror with a written finding that the technical superiority of the higher priced offer relative to other offers, warrants the additional cost.
- E. The Agency Head must provide written approval or rejection of the Committee's report and recommendation.

#### **11.14 NEGOTIATIONS AFTER THE AGENCY HEAD APPROVAL OF THE COMMITTEE REPORT**

- 11.14.1** Upon receipt of the Agency Head's approval of the recommended firm, the Committee is adjourned and negotiations between the selected firm and the agency may proceed.
- 11.14.2** The standard form of contract for the CM-R services is the AIA Document A133, Standard Form of Agreement between Owner and Construction Manager as Constructor, SCOSE Edition, with the AIA A201 (SCOSE Edition) used as the General Conditions to the contract. The AIA A201 should be modified in accordance with the modifications listed in the *Clauses for use on Construction Management At-Risk Projects*, found in Appendix C. The modifications may be compiled into a separate document and noted in Section 12.2.5 of the AIA A133.
- 11.14.3** Utilizing the AIA Document A133, Standard Form of Agreement between Owner and Construction Manager as Constructor, SCOSE Edition, negotiations consider the following:
  - A. Preconstruction Phase services including, but not limited to, participation in design progress and coordination meetings with the Owner and Architect, review of construction documents for constructability, availability of materials and labor, time requirements for construction, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions;
  - B. The Construction Manager's Fee as a percentage of the Cost of the Work; and
  - C. The splitting of savings between the Owner and the CM-R.
- 11.14.4** Negotiated proposal revisions may affect the scope of the proposed project, so long as the changes are within the general scope of the request for proposal.
- 11.14.5** Negotiations must be controlled by the Agency Project Manager and may include an advisor to the Project Manager. An advisor that has not previously signed an SE-414 must do so prior to assisting in negotiations.
- 11.14.6** Once negotiations with an offeror begin, the Agency must attempt to successfully negotiate a "satisfactory contract" without regard to any other proposals received. Negotiations are not an opportunity to re-evaluate one offeror against another.
- 11.14.7** If the procurement officer concludes that a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted with the second offeror, then the third, and so on. In no case may confidential information derived from proposals and negotiations submitted by competing offerors be disclosed.
- 11.14.8** The award of the contract must be made on the basis of the evaluation factors stated in the solicitation. The basis for award must explain the results of any negotiations or the reasons any negotiations were unsuccessful with an offeror.

#### **11.15 DECISION TO AWARD**

- 11.15.1** The Agency Head or its governing body makes the final selection decision based on the Committee's recommendation.
- 11.15.2** The Agency Head or its governing body may not overturn the Committee's decision unless they determine in writing that there is no rational basis for the Committee's decision, the Committee did not follow the RFP evaluation factors, or the Committee exercised its discretion in an arbitrary or capricious manner.
- 11.15.3** If the Agency Head or its governing body decides to reject the Committee's selection decision, the Agency must cancel the procurement action and start a new procurement process.
- 11.15.4** If the Agency rejects the decision of the Committee and chooses to cancel the procurement, the Agency must produce written documentation of the reason for the cancellation and place the documentation in the procurement file. Reasons to cancel may include the items listed in SC Regulation 19-445.2097(B)(1).

## 11.16 NOTICE OF INTENT TO AWARD

### 11.16.1 Posting Requirement

- A. Once the Agency selection is final, it must post a Notice of Intent to Award CM-R Contract (SE-470) following concurrence by OSE.
- B. The Agency must post the SE-470 at the time and in the location announced in the RFP. The Agency must also promptly mail a copy of the SE-470 to each offeror.
- C. If an Agency is unable to confirm intent to award on the posting date announced in the RFP, it must post a notice on that date at the specified location stating the new date the Agency will post the SE-470.

### 11.16.2 OSE Concurrence With Posting

- A. OSE must concur in the posting of SE-470 prior to the Agency posting and distributing the form.
- B. The Agency must submit a Request for Concurrence in Posting Notice of Intent to Award CM-R Contract (SE-460) to OSE with a copy of the supporting documentation as listed at the bottom of the SE-460.
- C. The submittal must be made after the Committee's final selection, approval of final selection by the Agency Head, and completion of negotiations.
- D. OSE will have five working days from the date of receipt of the SE-460 and all required documentation for approval. If the Agency does not receive an objection from OSE within the five working days, OSE will be deemed to have granted approval for the Agency to post the SE-470.
- E. To expedite this process, the Agency may email the OSE Project Manager and OSE Administrative Assistant PDF copies of the SE-460 and all required documentation. The copy to the Administrative Assistant is to assist in the process if the OSE Project Manager is out of the office.

## 11.17 CONTRACT EXECUTION WAITING PERIOD

- 11.17.1 The Agency must wait ten days after posting the SE-470 before it may execute the contract with the selected offeror. During this time, any offeror who is aggrieved by the Agency's decision may protest the contract award.
- 11.17.2 If the State Engineer receives such a protest in writing during the 10 day period, the Agency may not execute a contract until the matter is resolved unless the Agency, in accordance with the Procurement Code, requests a lifting of the stay and the CPOC grants the request.
- 11.17.3 If the State Engineer does not receive any protests, the Agency may execute the contract on the eleventh day after posting the SE-470.

## 11.18 EXECUTING THE CONTRACT

Once all conditions precedent to executing a contract have occurred, the Agency should submit an unsigned copy of the contract to the contractor with a cover letter requiring the contractor to execute the contract and return the original contract along with the Certificates of insurance in the form of the latest edition of the ACORD 25S showing that the Contractor has Insurance meeting the requirements of the RFP in place for the project within fourteen days.

## 11.19 DEBRIEFING UNSUCCESSFUL OFFERORS AFTER NOTICE OF AWARD

- 11.19.1 When the Agency awards a contract, unsuccessful offerors may desire a debriefing with the agency by submitting a written request to the Agency Project Manager.
- 11.19.2 The Agency should provide unsuccessful offerors with a debriefing promptly upon receipt of the written request.

## 11.20 PRECONSTRUCTION SERVICES

- 11.20.1 Typically, the CM-R would be engaged during the Schematic Design phase. Following the award of the contract, the CM-R should meet with the Agency and A/E to develop a schedule to coincide with the Agency's proposed project activities and timelines. The schedule will be coordinated with the design schedule already prepared by the A/E to include the CM-R's review of design documents, design coordination meetings with the Owner and A/E, and ultimately a meeting to present and negotiate the Guaranteed Maximum Price (GMP).
- 11.20.2 During the design process by the A/E, the CM-R will conduct reviews of the design documents to:
  - A. Perform constructability reviews and availability of materials and labor;
  - B. Identify project sequencing and possible "early" construction packaging for phased construction;
  - C. Evaluate major systems and make recommendations concerning the most cost-effective,

- D. evaluate the budget and make suggestions for cost-savings or value enhancements;
- E. Update cost estimates and scheduling; and
- F. Consult with subcontractors on components of the work.

**11.20.3** At a time agreed to by the Agency and the CM-R, the CM-R shall provide the Agency with a GMP. The GMP will include the Cost of the Work, the CM-R Construction Management fee, General Conditions, CM-R contingency, and the cost of bonds and insurance.

## **11.21 NEGOTIATING THE GUARANTEED MAXIMUM PRICE (GMP)**

**11.21.1** While the intent of the CM-R process is to award a single GMP for the work, it is recognized that the process allows for phased construction and which can be awarded as separate GMPs. In such a case, an Exhibit "A" to the AIA A133, SCOSE Edition, will be required to be completed and submitted for each individual GMP. This can be problematic to the scope, the budget, and the quality of the work; therefore, the number of phases (GMPs) should be kept to a minimum.

**11.21.2** Prior to converting the CM-R contract from the Pre-Construction services to a construction contract using Exhibit "A", the Agency must have a reasonable assurance that the proposed project will be completed within the approved construction budget. The time of this assurance will vary depending on the complexity of the work. Most often the cost estimate created by the CM-R at the Design Development stage will be the best indicator of the projects ability to remain within the approved construction budget.

**11.21.3** The CM-R shall provide the Agency with sufficient data and cost matrices to allow the Agency to review the GMP and be prepared to negotiate with the CM-R.

- A. Negotiations may include the Cost of the Work, General Conditions, and CM-R contingency.
  - 1. Cost of the Work is the direct cost of labor and materials, including subcontractor(s) overhead and profit to perform the work.
  - 2. General Conditions are the costs associated with establishing and manning a project office.
  - 3. CM-R Contingency is an amount available to the contractor to be used to cover increased costs incurred as a result of causes beyond its control, i.e. lost time, increases in subcontracts, acceleration, alleviate costs for defective, damaged, or nonconforming work. The CM-R contingency is not available for Owner-directed design or scope changes. Upon completion and final acceptance of the project, any unused CM-R contingency is returned to the Owner.
- B. If negotiations are successful, the Agency will complete the following for signature by the OSE Project Manager:
  - 1. Exhibit A to the AIA A133,
  - 2. Request for Authority to Execute Exhibit A to CM-R Contract (SE-475); and
  - 3. Change Order to CM-R Contract (SE-480).
- C. If negotiations are unsuccessful, the Agency will terminate the contract with the CM-R and proceed with the construction of the facility utilizing the Design-Bid-Build process.

**11.21.4** Alternates should not be used in a CM-R contract. The A/E may propose alternatives during the development of the construction documents; however, the alternatives that are accepted will be incorporated into the contract price and are not priced as alternates.

**11.21.5** Allowances should seldom be used and can be avoided by making material decisions early in the design process.

## **11.22 OSE CONCURRENCE WITH THE REQUEST FOR AUTHORITY TO EXECUTE EXHIBIT "A"**

**11.22.1** The establishment of a GMP constitutes a change in the contract amount. The Agency shall complete and submit an SE-480.

**11.22.2** The Agency is reminded that the use of multiple GMPs may require multiple:

- A. Exhibit A's to the AIA Document A133;
- B. Certificates of Insurance as required by the contract documents;
- C. Performance and Labor & Material Payment Bonds, each for not less than 100% of the amount of work awarded;
- D. Inspection/Material Testing Order Form (SE-955) applicable to the work awarded; and
- E. The Building/Construction Permit (SE-580) applicable to the work awarded.

**11.22.3** In the case of multiple GMPs, the Agency shall complete and submit an SE-475 for the establishment of each GMP along with the pertinent data noted at the bottom of the SE-475.

### 11.23 NOTICE TO PROCEED

The Agency may issue the Notice to Proceed – CM-R Contract (SE-490) after the contract has been signed by the Agency and a copy returned to the CM-R.

### 11.24 INSPECTION AND TESTING SERVICES

- 11.24.1** During the construction period, OSE and any other legally constituted authorities have access to the project premises for periodic inspections. The A/E's Basic Services may include site visits and observations of work-in-progress, Substantial Completion inspections, Final Completion inspections and other inspections per the A/E contract. Details of the A/E's observation requirements are set forth in the A/E contract.
- 11.24.2** The Agency must procure inspection and material testing services from firms on state contract to provide tests and inspections in accordance with Chapter 1 of each of the applicable International Code Council Series of Codes and with Chapter 17 of the International Building Code using the SE-955 and the Inspection/Material Testing Order Negotiation Worksheet (SE-955A).
- 11.24.3** The requirements and procedures for using inspection and material testing services on a project are set forth in Appendix G. Statewide term contracts for inspection and material testing services, including services and fees, may be found at <https://procurement.sc.gov/files/contracts/bldginsp-s40%20october%202017.pdf>. The listing of Inspection and Testing Firms, including point of contact, phone numbers, and addresses, may be found at: [https://procurement.sc.gov/files/Copy%20of%20Inspections\\_Testing\\_Firms\\_050516%20updated%209.12.17.xls](https://procurement.sc.gov/files/Copy%20of%20Inspections_Testing_Firms_050516%20updated%209.12.17.xls)
- 11.24.4** The Agency must procure inspection/material testing services before the start of construction.
- A.** The Agency must submit the SE-955, SE-955A and the Statement of Special Inspections Responsibilities (SE-962) to the OSE Project Manager along with the Building/Construction Permit (SE-580) for OSE approval prior to construction.
  - B.** Inspection and testing firms shall use and maintain in the Contractor's job trailer, the Project Inspection/Material Testing Log (SE-965), the Project Inspection/Material Testing Deficiency Log (SE-966), and a copy of the inspection/material testing report. Copies may be found in Appendix G of this manual.

### 11.25 BUILDING/CONSTRUCTION PERMIT

- 11.25.1** The Agency shall insert the applicable information in the spaces provided on the Building/Construction Permit (SE-580), sign the Agency Certification and submit it to OSE along with the SE-475 for each GMP. OSE will approve the permit by signing the SE-580 and returning a signed copy to the Agency.
- 11.25.2** The Agency must submit the SE-580 along with the SE-955, SE-955A and the Statement of Special Inspections Responsibilities (SE-962) to the OSE Project Manager for OSE approval prior to construction.
- 11.25.3** If there are multiple GMPs, the Agency must submit a proposed Building/Construction Permit (SE-580) for each separate package prior to beginning work on that GMP.

### 11.26 CERTIFICATE OF INSURANCE AND PERFORMANCE AND PAYMENT BONDS

- 11.26.1** After receiving the certificates of insurance and performance and payment bonds from the contractor, the Agency should review them to determine that they are authentic and meet the requirements of the Procurement Code, Regulations and contract.
- 11.26.2** The Agency is responsible to assure that it has the required labor and material payment bond in place before permitting the contractor to start work. Failure to do so could make the Agency liable for the contractor's failure to pay its subcontractors and suppliers.

### 11.27 CHANGE ORDERS

Change Orders shall be issued utilizing the SE-480 form and the process noted in Chapter 7 of this manual.

### 11.28 CHANGE DIRECTIVES

Change Directives shall be issued utilizing the AIA Document G714 and the process noted in Chapter 7 of this manual.

### 11.29 RESOLUTION OF CONSTRUCTION CLAIMS AND DISPUTES BETWEEN THE CONTRACTOR AND THE AGENCY

Resolution of claims and disputes shall be in accordance with the process noted in Chapter 7 of this manual.



**11.30 PAYMENTS TO THE CONTRACTOR**

The application and certification for payment, progress payments, withholding payment, and retained amount of payments shall be in accordance with the process noted in Chapter 7 of this manual.

**11.31 SUBSTANTIAL COMPLETION**

The inspections and declarations for Substantial Completion shall be in accordance with the process noted in Chapter 7 of this manual.

**11.32 CERTIFICATE OF OCCUPANCY/USE**

The issuance of the Certificate of Occupancy/Use (SE-585) shall be in accordance with the process noted in Chapter 7 of this manual. If multiple GMP's are awarded, requiring the issuance of multiple Building Permits, only a final Certificate of Occupancy/Use will be issued at the completion of the facility.

**11.33 RECORD DOCUMENTS**

Record Documents shall be issued in accordance with the process noted in Chapter 7 of this manual.

**11.34 FINAL COMPLETION**

Final Completion declaration and inspection shall be in accordance with the process noted in Chapter 7 of this manual.

**11.35 CONTRACT CLOSURE AND FINAL PAYMENT**

Contract closure and final payment shall be in accordance with the process noted in Chapter 7 of this manual.

**11.36 ONE-YEAR CORRECTIVE WORK PERIOD**

Corrective work of deficiencies noted within one year after the date of Substantial Completion shall be in accordance with the process noted in Chapter 7 of this manual.

**11.37 PROJECT CLOSE OUT**

When an Agency determines that a PIP project is complete, the Agency shall submit a Form A-1 to the Capital Budgeting Unit for approval to close out the project.

## CHAPTER 12

### DESIGN-BUILD, DESIGN-BUILD-OPERATE-MAINTAIN & DESIGN-BUILD- FINANCE-OPERATE-MAINTAIN

#### Including Design-Build, Guaranteed Energy Savings Contracts

#### 12.1 RELATED STATUTORY AUTHORITY

- 12.1.1** SC Code §§ 8-13-700 through 8-13-795 establishes the Rules of Ethical Conduct for public employees.
- 12.1.2** SC Code § 11-35-30 requires “good faith” in the negotiation of contracts.
- 12.1.3** SC Code § 11-35-1410 (7) defines a responsive offeror.
- 12.1.4** SC Code § 11-35-1520(3) & (10) requires that adequate public notice be given to given prospective proposers to respond to a solicitation and be notified of the award of that solicitation.
- 12.1.5** SC Code § 11-35-1530 outlines the use of Competitive Sealed Proposals.
- 12.1.6** SC Code §§ 11-35-1810 & 2410 outline responsibility determinations of offerors.
- 12.1.7** SC Code § 11-35-1830 addresses cost or pricing data for contracts and change orders awarded by RFP.
- 12.1.8** SC Code § 11-35-2430 and SC Regulation 19-445.2005(B) list the requirements for records retention.
- 12.1.9** SC Code § 11-35-2910(7)-(14) defines "Design-build," "Design-build-finance-operate-maintain," "Design-build-operate-maintain," "Design requirements," "Independent peer reviewer services," "Infrastructure facility," "Operations and maintenance," and "Proposal development documents.”
- 12.1.10** SC Code § 11-35-3005(3) allows the consideration of a firm who participated in preparing design requirements to participate in a design-build proposal.
- 12.1.11** SC Code § 11-35-3010 requires the agency to make a written determination of the project delivery method that is most advantageous to the State and submit it for approval by the State Engineer.
- 12.1.12** SC Code §§ 11-35-3015 (5), (6) & (7) require the selection of design-build, design-build-operate-maintain, and design-build-finance-operate-maintain contracts be procured by competitive sealed proposals.
- 12.1.13** SC Code § 11-35-3023(A) allows prequalification of offerors.
- 12.1.14** SC Code § 11-35-3024(2) defines the required contents of a Request for Proposals.
- 12.1.15** SC Code § 11-35-3024(2)(c)(ii) allows shortlisting of proposals in response to a Request for Proposals
- 12.1.16** SC Code § 11-35-3024(2)(c)(iii) allows paying stipends to unsuccessful offerors for Design-Build
- 12.1.17** SC Code § 11-35-3024(3)(a) requires that the importance of certain selection factors be listed.
- 12.1.18** SC Code § 11-35-3024(3)(b) and SC Regulation 19-445.2145(A)(7) defines independent peer reviewer services and their use.
- 12.1.19** SC Code § 11-35-3024(4) requires OSE to “oversee the evaluation process for procurements of construction if factors other than price are considered in the evaluation of a proposal.”
- 12.1.20** SC Code § 11-35-3030 provides bonding and security requirements and limits the amount of retention that can be withheld from progress payments to three and one-half percent.
- 12.1.21** SC Code 40-11-10 et seq defines the licensing requirements for a Design-Builder.
- 12.1.22** SC Code § 48-52-670 allows governmental Agencies to award guaranteed energy, water or wastewater savings contracts pursuant to SC Code § 11-35-1530 and details the requirements for “guaranteed energy, water, or wastewater savings contracts.”
- 12.1.23** SC Regulation 19-445.2010 provides information about the disclosure of procurement information.
- 12.1.24** SC Regulation 19-445.2095 provides information about the request, receipt of, clarification, procedures, discussions, rejections of individual proposals, and cancellation of Competitive Sealed Proposals.
- 12.1.25** SC Regulation 19-445.2097 provides information about the rejection of proposals.
- 12.1.26** SC Regulation 19-445.2145(K) provides additional procedures for Design-Build; Design-Build-Operate-Maintain; and Design-Build-Finance-Operate-Maintain including content of the RFP; purpose of design requirements; purpose of requirements for proposal development documents and content of the RFP.
- 12.1.27** SC Regulation 19-445.2145(L) requires errors and omissions insurance requirements be included in the solicitation for design-build, design-build-operate-maintain, and design-build-operate-finance-maintain procurements.
- 12.1.28** SC Regulation 19-445.2145(M) provides requirements for operations period performance bonds for design-build-operate-maintain and design-build-finance-operate-maintain contracts.

## 12.2 DEFINITIONS

### 12.2.1 Design-Build

- A. “Design-build” (DB) is a project delivery method in which an Agency enters into a single contract for design and construction of an infrastructure facility. DB may include bundling additional services into a single contract. For purposes of the following portions of this chapter, the term DB includes the following:
  - 1. Guaranteed energy, water, and wastewater savings projects.
  - 2. Design-build-operate-maintain (DBOM): A project delivery method in which an Agency enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period.
  - 3. Design-build-finance-operate-maintain (DBFOM): A project delivery method in which an Agency enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period.
- B. “Design requirements” are the written requirements of the infrastructure facility an Agency intends to procure using DB, including:
  - 1. The features, functions, characteristics, qualities, and properties that the Agency and State require;
  - 2. The anticipated schedule, including start, duration, and completion; and
  - 3. The budgets, as applicable to the specific procurement, for design, construction, operation, and maintenance.
  - 4. The design requirements (commonly called programming) may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project.
  - 5. Unless the Agency has the staff necessary to prepare the design requirements, it should hire a design firm to do so using one of the processes set forth in Chapter 4.
  - 6. Providing the minimum design requirements necessary to describe the infrastructure facility an Agency requires will allow the offerors the maximum flexibility and creativity to meet the Agency’s needs within the budget constraints.
- C. “Independent peer reviewer services” are additional architectural and engineering services that an Agency must acquire, except as otherwise provided in this manual, in the procurement of DB services.
  - 1. The function of the independent peer reviewer (IPR) is to confirm that the key elements of the professional engineering and architectural design provided by the DB are in conformance with the applicable standard of care.
  - 2. If an Agency elects not to contract with the IPR proposed by the successful offeror, the Agency must select the IPR in accordance with Chapter 4.
- D. “Responsiveness” when used in DB procurement has a slightly different interpretation than in a design bid build project.
  - 1. A responsive proposal is one that is complete and conforms to all the material aspects of the solicitation.
  - 2. If mandatory requirements are not included the proposal it may be declared non-responsive.
  - 3. If minor information is omitted, clarification may be permitted and the proposal accepted as modified if it is otherwise acceptable. See 12.13 for permissible communication and discussions.
  - 4. The provisions of SC Code §§ 11-35-1520 (8) & (13) apply to minor informalities in proposals

### 12.2.2 Operations and Maintenance

“Operations and Maintenance” is a project delivery method in which the Agency enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.

### 12.2.3 Guaranteed Energy, Water, or Wastewater Savings Contracts

- A. "Guaranteed energy, water, or wastewater savings contracts" are DB contracts for the evaluation and recommendation of energy, water, or wastewater conservation measures and for implementation of one or more of these measures.
- B. Such contracts may include financing by providing that all payments to the DB (except obligations on termination of the contract before its expiration) will be made over time and the cost savings or billable revenue increases resulting from implementation of the energy, water, or wastewater conservation measures will be used to make payments for the energy, water, or wastewater conservation systems installed pursuant to the contract.

- C. For State Agencies the DB is paid for their energy audit and design work in a lump sum. During the construction phase they are paid construction progress payments with final payment for each, or each group, of savings measures after substantial completion of the energy improvements. This requires verification of the savings by testing prior to the signing of the Certificate of Substantial Completion.
- D. The Agency must procure such contracts using the Request for Proposal (RFP) process.
- E. The State Energy Office publishes information for Public entities to use in Performance Contracting at <http://www.energy.sc.gov/perfcont>. The State Energy Office website may be viewed at [www.energy.sc.gov](http://www.energy.sc.gov).

### 12.3 SOURCE SELECTION METHOD

- 12.3.1 In accordance with the requirements of Chapter 3, the Agency shall provide the State Engineer with a written determination that the use of DB 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 (Committee) to conduct the DB selection.
- 12.3.2 The process of selecting the most qualified DB takes a significant amount of time and resources. An Agency should consider as part of their determination if they have the level of staffing to dedicate the time to make the process successful.
- 12.3.3 The amount of time, effort and cost associated with preparing a proposal for a DB solicitation can be significant so a two phase RFQ/RFP selection process or short listing of an RFP should be considered when preparing the determination.
- 12.3.4 A single phase RFP process with or without shortlisting may be appropriate for more simple projects and may be considered in the determination.
- 12.3.5 An Agency should consider paying a stipend to prequalified offerors to ensure that they receive quality proposals.
- 12.3.6 The competitive sealed proposal source selection method is referred to throughout this document as the RFP Process and as discussed herein will consist of a two-phase selection process which includes both the Request for Qualifications (RFQ) and RFP.

### 12.4 SELECTION COMMITTEE STRUCTURE AND STAFFING FOR THE RFP PROCESS

#### 12.4.1 Selection Committee Structure

- A. The Selection Committee (Committee) consists of voting and non-voting personal who evaluate proposals. They will make a selection based on their evaluations and assist the Agency Project Manager in reporting their decision to the final approving authority (Agency Head or a designee) at a management level above the Agency Project Manager.
- B. The Committee is chaired by a non-voting Chair appointed by the State Engineer, usually the OSE Project Manager assigned to the project.
- C. Voting and non-voting committee members are selected by the Agency Head or his designee and should include the Agency Project Manager and other state employees that are qualified to evaluate the proposals. OSE must concur with all Committee appointments.
- D. Technical advisors, usually non-voting members of the Committee, may be required to assist the Committee in the evaluation of proposals.
- E. The Committee should be comprised of a minimum of five voting members. While there is not a maximum number of voting, or non-voting, members on the Committee, it should be noted that as the number of members increases so does the difficulty to schedule committee meetings and interviews for selection.

#### 12.4.2 Selection Committee Membership

- A. The voting members of the Committee shall 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. Committee members should become familiar with the requirements of this act and avoid any conflict of interest.
  - 1. Each Committee member must sign a Confidentiality & Conflict of Interest Policy (SE-714) as a means of confirming their acceptance of their responsibilities.

2. The Agency should also have other persons involved in the decision making process sign an SE-714. For example, the Agency Head is not a member of the Committee but has final say over the Committee's decision, so they must sign a SE-714. The same is true for members of a Board of Trustees and administrative associates who assist in document preparation and handling.
- C. The Committee must comply with the Freedom of Information Act; however committee members must not disclose confidential information derived from proposals and negotiations submitted by competing offerors during the selection process. There is a summary of the requirements of this act in Chapter 1.
- D. There are no requirements for who may be appointed to a committee. For large projects (\$5 million or more), the Agency appointed members should consist of:
1. A member of the board or commission governing the Agency or a designee;
  2. The Agency Head (secretary, executive director, president, or like officer) or their designee;
  3. One representative of the division, department, or program for which the project is being built;
  4. Agency Project Manager; and
  5. Agency Facilities Director or their designee.

#### 12.4.3 Changes in Committee Membership

An Agency may only make changes in the makeup of the Committee with the written approval of the Agency Head and OSE.

#### 12.4.4 Committee Responsibilities

- A. Agency Head or their designee acting as the final selection authority, is responsible for the following:
1. Directing the Agency's efforts during the entire selection process.
  2. Reviewing and approving the Selection Plan.
  3. Appointing the members of the Committee, other than the Chair.
  4. Reviewing and approving the Committee's final report for selection and recommendation. The Agency Head may choose to reject the Committee's final choice by directing the Agency Project Manager to cancel the solicitation prior to award in accordance with the procedures set forth in SC Regulation 19-445.2097(B).
- B. Agency Project Manager, subject to the policies and procedures of a specific agency, is responsible for the following:
1. Preparing and submitting a draft of the Selection Plan to the Committee for its review;
  2. Preparing and submitting the final Selection Plan to the Agency Head for concurrence and the OSE Chairman for approval;
  3. Assuring that each Committee Member and any other appointed participant signs and returns an SE-714 before they are provided access to source selection information;
  4. Posting notices of Committee meetings in accordance with the Freedom of Information Act (FOIA) open meeting requirements;
  5. Preparing the RFQ and/or RFP outline;
  6. Coordinating the preparation and issuance of the RFQ and/or RFP with the OSE Chairman and Committee;
  7. Preparing advertisements for South Carolina Business Opportunities (SCBO) and any other publications;
  8. Conducting pre-submittal conferences;
  9. Issuing amendments to the RFQ or RFP with the OSE Chairman;
  10. Scheduling Selection Committee Meetings;
  11. Receiving and registering responding firms using the Register of Proposals – Design-Build (SE-711);
  12. Summarizing the RFQ evaluation data from the prequalification meeting of the Committee by using the Design-Build Selection Committee Report for RFQ Prequalification (SE-712);
  13. Notifying prequalified firms by using the Notification of Prequalification – Design Build (SE-713);
  14. Safeguarding confidential information and materials, including proposals and amendments;
  15. Conducting or coordinating cost or price analyses and documenting the results;
  16. Determining offeror responsiveness and responsibility;
  17. Conducting or controlling all discussions and negotiations with offerors

18. Maintaining written records of all discussions and negotiations with offerors;
  19. Promptly notifying all offerors eliminated from the competition;
  20. Requesting best and final offers (BAFO);
  21. Preparing the Selection Committee's report and recommendation to the Agency Head;
  22. Taking all necessary contractual actions; and
  23. Conducting the debriefing of unsuccessful offerors.
- C. The Committee Chair is a non-voting member appointed by the State Engineer. The Committee Chair's duties include the following:
1. Assisting the Agency Project Manager in scheduling and conducting Committee meetings and deliberations;
  2. Providing overall supervision, planning, direction, and execution of the Committee's activities.
  3. Assisting the Agency Project Manager in the determination of responsibility and responsiveness on individual proposals;
  4. Approving all competitive range determinations from the shortlisting list of offerors. The Chair may add offerors to the competitive range, but shall not remove them except for reasons of non-responsiveness.
  5. Summarizing the Committee members' raw evaluation data using the Design Build Selection Committee Summary – RFP (SE-717).
  6. Assisting the Agency Project Manager in debriefings and other matters, if requested.
- D. Voting Members duties include the following:
1. Independently review each proposal against the Plan criteria for the RFQ and RFP.
  2. Attend all Committee meetings.
  3. Participate in the prequalification selection for the RFQ; and
  4. Participate in the interview of each prequalified firm and complete the DB Selection Committee Member Evaluation – RFP (SE-715) taking into account both the written technical proposal and the interview presentation weighed against the evaluation factors in the Plan.
- E. Technical Advisors, Non-Voting Members
1. The Agency Head may appoint outside technical advisors with special expertise not available on the Committee but essential to the selection process.
  2. The Agency should use technical advisors in discrete areas such as reviewing technical aspects of proposals to assure compliance with the technical requirements of the RFP.
  3. The Agency should not give technical advisors access to information concerning overall Committee activities that they do not need to perform their advisory duties. Technical advisors should not attend Committee meetings unless specifically requested by the Committee Chair.

#### **12.4.5 Conflicts of Interest**

- A. The Committee Chair must instruct the committee members and technical advisors of the Procurement Code's requirements for ethical conduct, and require each member to sign an SE-714 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.
- B. If a committee member has an actual or apparent conflict of interest related to a proposal under evaluation, the Chair must remove that member and, if a sufficient number of voting members do not remain, request the Agency Head to 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 Committee Chair of the relationship for a determination as to whether or not an actual conflict of interest exists.

### **12.5 SELECTION COMMITTEE MEETINGS**

- 12.5.1 Every meeting of public bodies must be open to the public unless closed pursuant to SC Code § 30-4-70. A Committee is a body subject to this requirement. Every meeting of the Committee must be publicly announced at least twenty-four hours before the meeting.
- 12.5.2 When a meeting is held to discuss source selection information such as ranking statements of qualifications and proposals, the meeting will open publicly and any item on the agenda which is not protected source selection information will be addressed publicly.

- 12.5.3** Thereafter, the Committee should adjourn to go into executive session to discuss source selection information. The public must be excluded from these executive sessions with no exceptions.

## **12.6 SELECTION PLAN FOR THE RFP PROCESS**

### **12.6.1 The Selection Plan**

- A.** The Selection Plan (Plan) is the document that;
- 1.** Explains how the Agency will solicit statements of qualifications and proposals from DB and evaluate those statements and proposals in order to make the selection decision;
  - 2.** Establishes the required qualifications and the relative importance of those qualifications;
  - 3.** Outlines how the Agency will conduct negotiations,
  - 4.** Identifies the Chair and members of the Committee, and
  - 5.** Establishes milestone dates for the completion of the selection process.
- B.** The Plan is the Agency's statement to itself and to others as to how it intends to acquire what it needs. It distinguishes what is important from what is not and, by assigning weights, defines how important these distinctions are.

### **12.6.2 Minimum Requirements**

The Plan must include the following, as a minimum:

- A.** Description of the facility to be constructed and the design requirements;
- B.** Description of the duties and responsibilities of the Committee. Include the nominations for Committee by attaching a roster of personnel by name, title, and agency to the Plan;
- C.** Schedules of key events or milestones that will occur between the time the Committee is organized and its adjournment, including proposed pre-solicitation activities such as the drafting and issuance of South Carolina Business Opportunities (SCBO) announcements or the convening of a pre-submittal conference;
- D.** Solicitation plan (i.e. advertising plan);
- 1.** This must include publication in South Carolina Business Opportunities (SCBO). However, the Procurement Code recognizes that this alone may not constitute adequate public notice. This is especially the case for unique projects such as DBFOM projects. Therefore, the Agency needs to develop a solicitation plan that provides adequate public notice for real competition on the project.
  - 2.** The Solicitation Plan must describe how the Agency will advertise for proposals and how the Agency intends to develop interest in the project other than through advertising in SCBO.
  - 3.** The Solicitation Plan must also set forth the minimum number of days that the Agency will advertise the project.
- E.** An explanation of the contract to be used, the proposed contract form, and the nature of any special features to be included in the contract;
- F.** Statement of the proposed RFQ and RFP evaluation factors and their relative importance;
- G.** Description of the evaluation process, methodology, and techniques; and
- H.** If the Agency determines the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement, the Plan may provide for the prequalification of offerors and may include the payment of a stipend to prequalified or shortlisted offerors who participate in the RFP and the terms under which the Agency will pay stipends.

### **12.6.3 Preparation and Approval of the Plan**

- A.** The Agency Project Manager prepares and submits the Plan to the OSE Chairman and Committee for review.
- B.** The reviewed Plan is finalized and submitted to the Agency Head for approval.
- C.** The approved Plan must be reviewed and approved by the Committee Chairman before the Agency issues a solicitation or holds any pre-submittal conference.

## **12.7 REQUEST FOR QUALIFICATIONS (RFQ)**

- 12.7.1** When the Plan provides for prequalification of DB, the criteria in the Plan must be used to evaluate the submittals received. Only those firms who are likely to be selected should be prequalified. A minimum of three firms should be prequalified and at least two firms must be interviewed.

- 12.7.2** If only one prospective offeror is qualified, the prequalification process must be canceled. In this event, the Agency may start the process over or publicly advertise a request for proposals from all interested parties.
- 12.7.3** The decision to not prequalify a particular firm is protestable. The standard of review is the same as for a determination of non-responsibility

**12.7.4 The Solicitation and Contents for the RFQ**

- A.** The Agency must give adequate notice to prospective offerors of any pre-submittal conference so that all who wish to attend may arrange for representation. The notice must define as explicitly as possible the nature and scope of the project.
- B.** Provide for prequalifying of responsive and responsible offerors determined to be reasonably susceptible of being selected for award before discussions and evaluations.
1. The RFQ shall not include the Plan.
  2. The RFQ must state the number of DB the Agency will prequalify;
  3. The Agency's determination of how many proposals to prequalify is not protestable.
  4. Must give the criteria and order of importance of the criteria to be used in evaluating the proposals;
  5. Must list any qualifications required of the DB including:
    - a. Offeror technical qualifications;
    - b. Bonding capacity and any other forms of security required;
    - c. Insurance requirements; and
    - d. License requirements.
    - e. Set forth the deadline for submission of the statements of qualifications; and
    - f. Must include the *Clauses for Use in Design-Build RFP*, these may be found in Appendix E.
- C.** The Agency must give prompt public notice of which proposals it prequalifies using the Notification of Prequalification – DB (SE-713). The SE-713 must be posted in the location announced in the solicitation and sent to all of the offerors who responded to the solicitation.

**12.7.5 Licensing and Bonding Requirements for Design-Builders**

- A.** The DB must comply with all licensing requirements of the SC Department of Labor, Licensing and Regulation as both a designer and contractor.
- B.** The DB must provide a Performance Bond and a Labor and Material Payment Bond, for 100% of the contract price, excluding costs for operation, maintenance and finance.
- C.** The Agency may require one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately or as one element of another project delivery method:
1. Operations period surety bonds that secure the performance of the DB operations and maintenance obligations;
  2. Letters of credit in an amount appropriate to cover the cost to the governmental body of preventing infrastructure service interruptions for a period up to twelve months; and
  3. Appropriate written surety bonds or guarantees from the DB, or depending upon the circumstances, from a parent corporation, to secure the recovery of re-procurement costs to the governmental body if the DB defaults in performance.

**12.8 REQUEST FOR PROPOSALS (RFP)**

**12.8.1 The Solicitation and Contents of the RFP**

- A.** The Agency must prepare a solicitation that will communicate to the offerors both the Agency's needs and the evaluation factors the Committee will use in evaluating the proposals.
- B.** The solicitation shall not include the Selection Plan.
- C.** The solicitation must:
1. Advise prospective offerors on how their proposals should be organized and arranged.
  2. Provide that offerors must submit the technical and price or cost portions of their proposals in separate sealed envelopes.
  3. Inform offerors of the evaluation factors for award and information on the source selection system the Agency will employ including a statement of all significant factors and sub-factors (including price) which the Committee will consider in evaluating proposals and the relative importance assigned to each of these factors.



4. Inform offerors of minimum requirements that apply to particular evaluation factors.
5. Provide for short-listing of responsive and responsible offerors determined to be reasonably susceptible of being selected for award before discussions and evaluations.
  - a. The RFP states the number of proposals the Agency will short-list, and
  - b. The Agency gives prompt public notice of which proposals it short-lists.
6. If the Plan provides for the payment of stipends to unsuccessful offerors:
  - a. The RFP must include the amount of the stipend, and
  - b. The RFP must include the terms under which the Agency will pay stipends.
7. In addition to any other evaluation factors, must state the relative importance of the following required evaluation factors:
  - a. Demonstrated compliance with the design requirements;
  - b. Offeror qualifications
  - c. Financial Capacity
  - d. Project schedule;
  - e. Price, or, for DBOM or DBFOM, life-cycle price; and
  - f. Must require each offeror to identify an IPR and include the competence and qualifications of offerors proposed IPR if the offeror is required to provide an IPR as a part of its proposal.
8. Must include the Agency's design requirements.
9. Require that offerors submit proposal development documents.
10. Set forth the deadline for submission of proposals.
11. Include the *Clauses for Use in Design Build RFP* if a prequalification process is not used. These can be found in Appendix E.
12. Notify proposers that they must visibly mark as "confidential" each part of their proposal which they consider to be proprietary information.
13. Any other items required in the RFQ if a single phase selection process is used.

## **12.9 REQUIREMENT FOR AN INDEPENDENT PEER REVIEWER**

- 12.9.1 An Agency must retain an IPR on each Design-Build project unless allowed to self-perform by OSE.
- 12.9.2 The DB can be required to propose an IPR as part of their contract or the IPR can be hired by the Agency using one of the methods in chapter 4.
- 12.9.3 If the Agency desires to forego an IPR, the Agency must submit to OSE a written determination that considering the nature, size, and scope of the project, the Agency has personnel on staff qualified to perform the functions of the IPR.
- 12.9.4 The Agency must include the qualifications of the personnel who will perform the functions of the IPR.
- 12.9.5 OSE will within 10 days of receipt of the Agency's determination, notify the Agency of their determination, in writing, whether to allow the Agency to self-perform IPR.

## **12.10 ADVERTISEMENT**

- 12.10.1 Using the Invitation for Design Build Services (SE-710), the Agency must advertise in SCBO and any other publications identified in the Plan for interested firms to provide DB services for the project.
- 12.10.2 The Agency Project Manager will prepare the SE-710 and submit it in MS Word format to the OSE Project Manager. They will review the SE-710 and send an approved copy to SCBO and the Agency.
- 12.10.3 The Agency must give adequate public notice to prospective offerors so that all who wish to may arrange representation.
- 12.10.4 The Advertisement must state as explicitly as possible the nature and the scope of the project and of any pre-submittal conference that is being held.

## **12.11 PRE-SUBMITTAL CONFERENCES**

- 12.11.1 The Agency may conduct pre-submittal conferences to explain design requirements, qualification requirements, proposal format, and other pertinent information to interested firms for the RFQ or the RFP or both.

- 12.11.2** When the Agency determines that pre-submittal conferences are in its best interest.
- A.** For a two-phase selection process;
    - 1. The Agency must notify advertise the pre-submittal conference in SCBO and in any other publications where public notice was given as part of the Plan for the RFQ;
    - 2. Any interested parties may attend a pre-submittal conference as part of an RFQ; and
    - 3. Attendance for a pre-submittal conference for an RFP must be limited to prequalified offerors and does not have to be advertised.
  - B.** For a single phase process;
    - 1. The Agency must notify advertise the pre-submittal conference in SCBO and in any other publications where public notice was given as part of the Plan for the RFP.
    - 2. Any interested parties may attend a pre-submittal conference as part of an RFP.
- 12.11.3** The Agency must make an amendment to the solicitation to document any changes or clarifications made during the pre-submittal conference.

## **12.12 POTENTIAL OFFEROR'S PARTICIPATION IN A REPORT OR STUDY USED IN PREPARATION OF DESIGN REQUIREMENTS**

- 12.12.1** Participation in a report or study that is used in the preparation of design requirements for a project does not disqualify a firm from participating as a member of a proposing team in DB procurement unless the participation provides the business with a substantial competitive advantage.
- 12.12.2** A copy of a report or study that was prepared by a potential offer shall be given to all offerors.

## **12.13 RECEIPT, OPENING AND REGISTER OF PROPOSALS**

- 12.13.1** The receipt of proposals is handled in the same way for both a one and two-phase process.
- 12.13.2** The Agency must time-stamp proposals and modifications upon receipt and hold them unopened (except as otherwise provided in the Procurement Regulations) in a secure place until the established due date.
- 12.13.3** The Agency's Project Manager (or designee) must open the proposals publicly in the presence of one or more State witnesses at the time and place designated in the solicitation for the RFP process.
- 12.13.4** The person opening the proposals should declare the arrival of the time for receipt of proposals, give their name and the names of the witnesses, and record this information on a Register of Proposals (SE-711).
- 12.13.5** The Agency must not disclose the contents and the identity of competing offers during the process of opening proposals.
- 12.13.6** If members of the public appear at the opening, the person opening the proposals should state that they will conduct the opening of proposals and recording of the names in silence on the SE-711 to protect confidential source information.
- 12.13.7** The Agency may not make the SE-711 open to public inspection until after the notification of intent to award, whichever is earlier.

## **12.14 PERMISSIBLE COMMUNICATIONS WITH OFFERORS AFTER OPENING BUT BEFORE AWARD**

- 12.14.1** The Chief Procurement Officers have jointly published guidelines for communications with offerors after opening proposals but prior to award. Such discussions include clarification discussions and negotiations. These guidelines are found in Appendix I.
- 12.14.2** This document also addresses BAFO. The Agency must conduct discussion and any BAFO process in accordance with these guidelines.
- 12.14.3** Seeking clarification of statements of qualifications or proposals is permitted.
- 12.14.4** Negotiations with the highest ranked offeror is permitted after evaluation and ranking.
- A.** Negotiations are permitted on price and
  - B.** Scope of the contract so long as the changes are within the general scope of the RFP,
  - C.** Or on both price and scope.

## **12.15 REJECTION OF PROPOSALS, WITHDRAWAL OF PROPOSALS AND CANCELLATION OF SOLICITATION**

### **12.15.1 Rejection of Individual Proposals:**

- A. The Agency does not need to accept proposals unconditionally without alteration or correction, and to the extent otherwise allowed by law, the State's stated requirements may be clarified after proposals are submitted. The Agency must consider this flexibility in determining whether reasons exist for rejecting all or any part of a proposal.
- B. Reasons for rejecting proposals include but are not limited to the following:
  - 1. The business that submitted the proposal is non-responsible as determined under SC Code § 11-35-1810;
  - 2. The proposal ultimately (after an opportunity, if any is offered, for clarifying the proposal has passed) fails to meet the announced requirements of the State in some material respect; or
  - 3. The proposed price is clearly unreasonable.
- C. The Agency must document the reasons for cancellation or rejection and make the documentation a part of the procurement file available for public inspection.

### **12.15.2 Withdrawal of Individual Proposals**

In rare instances an offeror may request to withdraw their proposal. This might occur at any stage of the process for a variety of reasons. The request for withdrawal from the offeror should be in writing and acceptance of the withdrawal should also be documented in writing. Copies of both documents should be included in the procurement file.

### **12.15.3 Rejection of Proposals – Cancellation of Solicitation Prior to Award**

- A. Unless there is a compelling reason to reject all proposals, the Agency, after receiving and opening proposals, must award a contract to the highest ranked responsible offeror.
- B. Should the Agency decide to cancel a solicitation after opening proposals but before award, the Agency must determine in writing that:
  - 1. Inadequate or ambiguous specifications were cited in the solicitation;
  - 2. Specifications have been revised;
  - 3. The infrastructure facility being procured is no longer required;
  - 4. The solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
  - 5. Proposals received indicate that the needs of the State can be satisfied by a less expensive alternative differing from that on which the proposals were requested;
  - 6. All otherwise acceptable proposals received are at unreasonable prices;
  - 7. The proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
  - 8. For other reasons, cancellation is clearly in the best interest of the State.
- C. Any determination to cancel the solicitation must be made in good faith. The Agency must document the reasons for cancellation or rejection and make the documentation a part of the procurement file available for public inspection.

## **12.16 EVALUATION AND RANKING OF PROPOSALS**

### **12.16.1 Ranking by Individual Committee Members**

- A. Each member of the Committee must examine each proposal in detail to measure its contents against the evaluation factors.
- B. For an RFQ
  - 1. Mandatory requirements may be evaluated first to determine the responsibility of offerors.
  - 2. Submittals may be initially classified as:
    - a. Acceptable (reasonably susceptible of being selected for award);
    - b. Potentially acceptable (reasonably susceptible of being made acceptable through discussions);or
    - c. Unacceptable.
  - 3. Only firms that are determined to be reasonably susceptible or being selected for award should be prequalified.
  - 4. Only the number of firms stated in the RFQ may be prequalified.

- C. For an RFP
  1. Each voting member of the Committee must evaluate each proposal, both written and oral, assign a numerical score to each evaluation criteria, and record this information on the DB Selection Committee Member Evaluation – RFP (SE-715).
  2. If a voting committee member determines two firms to be equally qualified, the committee member must re-evaluate their rankings to break any ties in scores prior to submitting the SE-715 to the Committee Chair.

#### 12.16.2 Consensus of Selection Committee

- A. After the voting members have separately evaluated the technical proposals including the interviews for an RFP, the Committee must meet and formulate its collective conclusions. The Committee must discuss significant variations in voting members' scores or assessments of technical merit and resolve discrepancies or fully explain them in the record.
- B. The Committee should use the DB Selection Committee Report for RFQ Selection (SE-712) to document the firms prequalified and the reasons for that prequalification based on the RFQ evaluation criteria.
- C. Each voting member must turn their signed evaluation into the Chair who will compile the individual evaluations onto a DB Selection Committee Summary – RFP (SE-717).
- D. If after compiling the SE-717 the Committee determines two firms to be equally qualified; the Committee must re-evaluate their rankings to break any ties in final rankings. This can be done by:
  1. If one firm is a resident firm and the other is a non-resident firm, the committee must rank the resident firm higher than the non-resident firm; or
  2. One or more Committee members revising their scores after additional discussions about the firms who are tied;
  3. Or by Committee consensus on which proposal is the most advantageous to the State.
  4. If the breaking of the tie is not clearly indicated on a SE-715, the breaking of the tie must be documented and made part of the procurement file.
- E. The Committee assigns the final ranking by consensus.

#### 12.16.3 Selection Committee Report and Recommendation

- A. After the Committee evaluates the proposals, the Agency Project Manager must prepare a report for the Agency Head. The Chair and each Committee member must sign the report.
- B. The report must include the Committee's recommendation regarding the source(s) the Agency should select for award or negotiation.
- C. The report includes the ranking of each offeror's proposal from the most advantageous to the least advantageous. For each offeror, the report should provide the final score and a summary of each proposal including an assessment of the offeror's compliance with the requirements of the solicitation, any changes to the technical evaluation scores and a narrative to support the changes.
- D. The Committee must support a recommendation to award to or negotiate with a higher priced, higher scored offeror with a written finding that the technical superiority of the higher priced offer relative to other offers, warrants the additional cost.
- E. The Committee must document the rationale for the finding of technical superiority in detail. Unsupported conclusory statements are not acceptable.

### 12.17 NEGOTIATION OF THE CONTRACT

12.17.1 OSE has not adopted any DB contract.

12.17.2 Any standard contract used must be modified to meet the requirements of the Procurement Code and other applicable state laws. The following items must be included in the contract:

- A. All of the *Clauses for Use in Design Build Contracts* found in Appendix E must be included in the contract.
- B. What submittals, shop drawings, etc. must be submitted to the IPR and the time allowed for those reviews.
- C. If liquidated damages will be assessed and the amount if they are deemed to be necessary.
- D. Any payments or performance bonds and other surety bonds or guarantees should be clearly identified and defined.
- E. The contract must clearly define OSE as the code authority for the project and provide for review and approval of the construction documents prior to commencement of construction.
- F. Peer review of the design documents must be specified.

**12.17.3 Alternates and Allowances**

- A. Alternates are not normally used in a DB contract in the traditional sense. The DB may propose alternatives during the development of the construction documents; however those that are accepted will be incorporated into the contract price and not priced as alternates. This allows the maximum amount of flexibility during the design process.
- B. Allowances may be used; however, the amounts must be carefully developed and considered so budget issues do not result towards the end of the project. If possible, allowances should be avoided by making material decisions early in the design process.

**12.18 DECISION TO AWARD**

- 12.18.1** The Agency Head or its governing body typically makes the final selection decision based on the Committee's recommendation.
- 12.18.2** The Agency Head or its governing body may not overturn the Committee's decision unless they determine in writing that there is no rational basis for the Committee's decision, the Committee did not follow the evaluation factors, or the Committee exercised its discretion in an arbitrary or capricious manner.
- 12.18.3** If the Agency Head or its governing body decides to reject the Committee's selection decision, the Agency must cancel the procurement action and start a new procurement process.
- 12.18.4** If the Agency rejects the decision of the committee and chooses to cancel the procurement, the agency must comply with the requirements 12.14.
- 12.18.5** After the Agency Head approves the award, the Agency Project Manager may submit the proposed contract, with supporting documentation, to OSE for review and approval.

**12.19 NOTICE OF INTENT TO AWARD****12.19.1 Requirement of Posting**

- A. Once the Agency selection is final, it must post a Notice of Intent to Award DB Contract (SE-770).
- B. The Agency must post the SE-770 at the time and in the location announced in the solicitation. The Agency must also promptly mail a copy of the notice to each responsive offeror.
- C. If an Agency is unable to confirm intent to award on the posting date announced in the solicitation, it must post a notice on that date at the specified location stating the new date the Agency will post the SE-770.

**12.19.2 OSE Concurrence with Posting**

- A. OSE must concur in the posting of the SE-770 prior to the Agency posting and distribution.
- B. The Agency must submit a Request for Concurrence in Posting Notice of Intent to Award DB Contract (SE-760) to OSE with a copy of the proposed SE-770, proposed contract, and Committee report with supporting documentation.
- C. This submittal must be made after the Committee's final selection, completion of negotiations and approval of the Agency Head.
- D. OSE will have five working days from the date of receipt of the SE-760 and all required documentation for approval. If the Agency does not receive an objection from OSE within five working days from the date OSE receives the SE-760 and all required documentation, OSE will be deemed to have granted approval for the Agency to post the SE-770.
- E. To expedite this process, the Agency must email the OSE Project Manager and OSE Administrative Assistant PDF copies of the SE-760 and all required documentation.
- F. The requirement for a copy to the Administrative Assistant is to expedite the process in the event the OSE Project Manager is out of the office.

**12.20 CONTRACT EXECUTION WAITING PERIOD**

- 12.20.1** The Agency must wait ten days after posting the SE-770, before it may execute a contract with selected offeror.
- 12.20.2** During this time, any offeror who disagrees with the Agency's decision may protest the contract award.
  - A. If the State Engineer receives such a protest in writing during this period, the Agency may not execute a contract until the matter is resolved unless the Agency in accordance with the Procurement Code requests a lifting of the stay and CPOC grants the request.
  - B. If the State Engineer does not receive any protests, the Agency may execute a contract on the eleventh day after posting the SE-770.

## 12.21 EXECUTING THE CONTRACT

- 12.21.1** Once all conditions precedent to executing a contract have occurred, the Agency should submit an unsigned copy of the contract to the DB with a cover letter requiring the DB to execute the contract and return the original contract along with the following documents to the Agency within fourteen days:
- A. Certificates of insurance in the form of the latest edition of the ACORD 25S showing that the DB has Insurance meeting the requirements of the RFP in place for the project;
  - B. The Performance Bond (SE-355);
  - C. The Labor and Material Payment Bond (SE-357), and
  - D. Any other performance surety bonds or guarantees required by the contract.
- 12.21.2** Reviewing Certificates of Insurance and Performance and Payment Bonds
- A. After receiving the certificates of insurance and performance and payment bonds or other surety bonds or guarantees from the DB, the Agency should review them to determine that they are authentic and meet the requirements of the Procurement Code and Regulations.
  - B. The Agency is responsible to assure that it has the required labor and material payment bond in place before permitting the DB to start work. Failure to do so could make the Agency liable for the DB's failure to pay its subcontractors and suppliers.
- 12.21.3** The Agency may issue the Notice to Proceed – DB Contract (SE-790) after the contract has been signed by the Agency and a copy returned to the DB.

## 12.22 NOTIFICATION OF UNSUCCESSFUL OFFERORS

### 12.22.1 Prior to Notice of Award:

- A. When the Committee determines that an offeror's proposal is not acceptable, the Agency must notify the offeror in general terms that it is no longer under consideration for award and also inform the offeror that they will not consider a revision to the proposal.
- B. Such notice must not be in the form of a blanket notice to all offerors but must be an individual notice tailored to each offeror.
- C. Each individual notice must not inform the offeror of the status of any other offeror's proposal nor name any other offeror.

### 12.22.2 After Notice of Award:

The Agency should provide unsuccessful offerors with a debriefing upon request.

## 12.23 INSPECTION AND TESTING SERVICES

- 12.23.1** During the construction period, OSE and any other legally constituted authorities have access to the project premises for periodic inspections.
- 12.23.2** The Agency must procure inspection and material testing services from firms on state contract to provide tests and inspections in accordance with Chapter 1 of each of the applicable International Code Council Series of Codes and with Chapter 17 of the International Building Code using the Inspection/Material Testing Order (SE-955) and the Inspection/Material Testing Order Negotiation Worksheet (SE-955A).
- 12.23.3** The requirements and procedures for using inspection and material testing services on a project are set forth in Appendix G. Statewide term contracts for inspection and material testing services, including services and fees, may be found at <https://procurement.sc.gov/files/contracts/bldginsp-s40%20october%202017.pdf> . The listing of Inspection and Testing Firms, including point of contact, phone numbers, and addresses, may be found at [https://procurement.sc.gov/files/Copy%20of%20Inspections\\_Testing\\_Firms\\_050516%20updated%209.12.17.xls](https://procurement.sc.gov/files/Copy%20of%20Inspections_Testing_Firms_050516%20updated%209.12.17.xls).
- 12.23.4** The Agency must procure inspection/material testing services before the start of construction.
- 12.23.5** Inspection and testing firms shall use and maintain, in the DB job trailer, the Project Inspection/Material Testing Log (SE-965), the Project Inspection/Material Testing Deficiency Log (SE-966), and a copy of the inspection/material testing report. Copies may be found in Appendix G.

## 12.24 BUILDING/CONSTRUCTION PERMIT

- 12.24.1** The Agency shall insert the applicable information in the spaces provided on the Building/Construction Permit (SE-580), sign the Agency Certification and submit it to OSE for approval. OSE will approve the permit by signing the SE-580 and returning a signed copy to the Agency.

**12.24.2** The Agency must submit the SE-580 along with the SE-955, SE-955A and the Statement of Special Inspections Responsibilities (SE-962) to the OSE Project Manager for OSE approval prior to construction.

## **12.25 DESIGN DOCUMENT SUBMITTALS TO OSE**

**12.25.1** Agencies or the DB must submit Schematic Design and Construction Documents to OSE for their review and approval in accordance with the procedures of Chapter 5.

**12.25.2** Design Documents must be submitted using the Design Document Transmittal Form DB (SE-771).

**12.25.3** OSE will not review drawings and documents that are incomplete, ambiguous, or difficult to read. OSE will notify the DB and the Agency of such condition and ask for a revised submission.

**12.25.4** OSE's statutory review period does not start to run until it receives a complete, unambiguous, and readable set of drawings and documents.

**12.25.5** A SE-580 will not be issued until properly completed design documents have been reviewed and approved by both OSE and IPR.

## **12.26 CHANGE ORDERS**

**12.26.1** A change order may modify one or more of the following elements of the contract:

- A. Scope of Work
- B. Contract Sum
- C. Contract Time

**12.26.2** It may be difficult on a DB project to determine if the DB is entitled to additional compensation or time for changes in the work since they are responsible for both the design and construction. For this reason a very thorough review of the proposed construction documents, both drawings and specifications, must be conducted so potential change orders can be avoided. Reviews should be performed by the Agency, OSE and IPR. Before the documents are finalized the Agency has much more ability to negotiate what is and what is not included in the contract price and duration. Change Orders for a DB contract are more likely to be related to a change from the original scope of work or unforeseen conditions. Up front planning, an ongoing working relationship with the DB and thorough review of the design documents will minimize the need for change orders and maximize the scope of the project within the budget.

**12.26.3** Under no circumstances may the DB proceed with the work of a change order until it is approved.

**12.26.4** If the amount of the change order exceeds the limit of the Agency's construction change order certification, OSE must authorize the change order before the DB may perform any work on the change order.

**12.26.5** Change orders should be documented using the Change Order to DB Contract (SE-780).

## **12.27 CLAIMS AND DISPUTES**

**12.27.1** Because there is no independent A/E in a DB project to assist, the Agency Project Manager must assume a more active role in settling disputes before they become claims. See Claims and Dispute Resolution in the required contract clauses for DB.

**12.27.2** The DB is responsible for resolving all claims between its suppliers and subcontractors.

## **12.28 PAYMENTS TO THE DB**

The application and certification for payment, progress payments, withholding payment, and retained amount of payments shall be in accordance with the process noted in Chapter 7 of this manual.

## **12.29 SUBSTANTIAL COMPLETION**

The inspections and declarations for Substantial Completion shall be in accordance with the process noted in Chapter 7 of this manual.

## **12.30 CERTIFICATE OF OCCUPANCY/USE**

The issuance of the Certificate of Occupancy/Use (SE-585) shall be in accordance with the process noted in Chapter 7 of this manual.

**12.31 RECORD DOCUMENTS**

Record Documents shall be issued in accordance with the process noted in Chapter 7 of this manual.

**12.32 FINAL COMPLETION**

Final Completion declaration and inspection shall be in accordance with the process noted in Chapter 7 of this manual.

**12.33 CONTRACT CLOSURE AND FINAL PAYMENT**

Contract closure and final payment shall be in accordance with the process noted in Chapter 7 of this manual.

**12.34 ONE YEAR CORRECTIVE WORK PERIOD**

Corrective work of deficiencies noted within one year after the date of Substantial Completion shall be in accordance with the process noted in Chapter 7 of this manual.

**12.35 PROJECT CLOSE OUT**

When an Agency determines that a PIP project is complete, the Agency shall submit a Form A-1 to the Capital Budgeting Unit for approval to close out the project.

**12.36 ADDITIONAL RESOURCES**

Additional information, including best practices, may be found at the Design-Build Institute of America website: <https://www.dbia.org/Pages/default.aspx>.



## CHAPTER 13

# AGENCY CERTIFICATION FOR CONSTRUCTION PROCUREMENT AND DELEGATED CODE REVIEW

### 13.1. RELATED STATUTORY AUTHORITY

- A. SC Code § 10-1-180 establishes the State Engineer as the Building Official for state construction.
- B. SC Code § 11-35-540 permits SFAA to promulgate regulations, to approve agencies' internal operational procurement procedures, and to audit and monitor agencies' procurement procedures.
- C. SC Code § 11-35-845 permits agencies with total management capabilities to oversee the administration of permanent improvement projects with the Office of State Engineer serving as an audit function.
- D. SC Code § 11-35-1210 permits SFAA to certify agencies to make direct procurements not under term contract and within assigned dollar limits.
- E. SC Code § 11-35-1220 permits the Chief Procurement Officers to require that agencies report all public procurements on forms they prescribe.
- F. SC Code § 11-35-1230 requires the office designated by SFAA for that purpose to audit and provide fiscal reporting.
- G. SC Code § 11-35-1550 authorizes any agency to conduct its own procurement of \$50,000 or less in actual or potential value under its own authority in accordance with the procurement code.
- H. SC Code § 11-35-3220 requires the State Engineer to approve all design professional selections except those procured in response to emergency or sole source declarations or for contracts of \$25,000 or less.
- I. SC Regulation 19-445.2015 defines unauthorized procurements and the process for terminating or ratifying such procurements.

### 13.2 DELEGATION OF CONSTRUCTION PROCUREMENT AUTHORITY

- A. All Agencies have a basic level of authority of \$50,000, permitting them to procure construction services valued at \$50,000 or less on their own.
- B. The Materials Management Officer may recommend to SFAA that an Agency receive certification to make direct procurements above the basic level of \$50,000. Certification to authorize change orders within certain limits may be a part of this recommendation.
- C. For construction procurement certification in excess of \$50,000, the Materials Management Office evaluates the Agency for knowledge and performance related to administration of the Procurement Code and the General Conditions of the Construction Contract.
- D. Construction procurements within the Agency's construction procurement certification are the sole responsibility of the Agency. This includes the issuance of building permits, the provision of inspection services, and the issuance of certificates of occupancy.
- E. All procurement activities under an Agency's certification must adhere to all laws and regulations governing construction procurement and to the requirements of this manual.
- F. Certified Agencies may only procure construction using OSE-approved contract forms.
- G. OSE must monitor and approve construction procurements exceeding the Agency construction certification, including IDC construction delivery orders.
- H. OSE and MMO may perform audits to monitor compliance with these standards.

### 13.3 CERTIFICATION REQUEST PROCEDURES

#### A. Request for Certification Exceeding Current Certification

- 1. Agencies desiring construction procurement certification in excess of their current certification must submit a written request to the Materials Management Officer. The Agency should submit their request well in advance of expiration of their current certification.
- 2. The request must contain the following information:
  - a. The proposed certification level;
  - b. The Agency's building program over the last five years;
  - c. The Agency's building program projected for the next five years;

- d. A list, including the dollar value, of initial design and construction procurements and the contract amendments and change orders that the proposed increased certification level would have allowed on projects constructed during the past five (5) years;
- e. The individual in responsible charge of construction projects;
- f. The Agency's organization and staffing, current and proposed (if different), for the management of construction projects and the support available to the staff; and
- g. The resumes of both procurement and technical staff members showing relevant experience and current registrations, licenses, and certifications.

**B. Evaluation of the Request for Increased Certification**

Audit and Certification will audit the Agency's internal procurement practices and OSE will review the Agency's construction project execution practices and the two will make recommendations based on the following criteria:

- 1. Demonstrated need for the certification;
- 2. Estimated number of additional construction-related procurements that the requested certification level would allow;
- 3. Past audit reports;
- 4. Evaluation of the Agency's adherence to the procurement code, related regulations, and this manual, with an emphasis on competitive procurement methods; and
- 5. Qualifications of the staff assigned to the procurement process.

**13.4 AUDIT AND RECORD RETENTION REQUIREMENTS**

- A. For Agencies procuring construction related services within the certification limits granted by SFAA, both Audit & Certification and OSE perform an audit function.
- B. The Agency must make all procurement records available to the Attorney General, OSE, and Audit & Certification.
- C. Agencies must retain and dispose of procurement records on all projects in accordance with guidelines approved by the Department of Archives and History.

**13.5 IN-HOUSE CONSTRUCTION PROJECTS**

- A. In-house construction projects are projects where the Agency uses its own forces to supply all labor and the Agency does not use any outside contractor or subcontractor. All in-house projects must comply with the cost limits and licensing requirements of the SC Contractors' Licensing Board.
- B. The Agency must use the actual cost of both labor and materials to determine if the project exceeds the Agency construction certification and to determine the review and approval requirements by OSE.
- C. If individual procurements of construction materials or equipment exceed the Agency goods and services certification, the Agency must make those procurements through the State Procurement Office or through a state contract. The Agency may obtain further interpretation on these requirements from the State Procurement Office.

**13.6 CERTIFICATION VIOLATIONS**

Any procurement that violates an Agency's certification limits is an unauthorized procurement that the Agency must terminate or ratify in accordance with SC Regulation 19-445.2015.

**13.7 DELEGATION OF BUILDING CODE ENFORCEMENT AUTHORITY**

**A. General**

- 1. The State Engineer functions as the Building Official for state construction, including the enforcement of the codes and standards listed in Chapter 5.
- 2. The International Building Code (IBC) authorizes the Building Official to delegate specific duties and responsibilities for enforcement of the provisions of the IBC to others and to establish policies and procedures related to this delegation of authority.
- 3. An Agency may request authority to self-perform reviews of the Agency's construction project drawings and specifications for conformance with the Building Code and regulations and standards set forth in Chapter 5 this manual.

4. An Agency may also request authority to self-perform code inspections of construction for compliance with those same standards.
5. OSE will consider the Agency's project workload and the availability of sufficient and qualified employees that can be dedicated to the review and/or inspection process in evaluating such requests.
6. Agencies acting within their level(s) of building code review and/or inspection authority exercise the authority of the State Engineer, and accept the responsibilities implicit in that authority. Agencies should carefully review Chapter 1 of the International Building Code for more information regarding the duties, authority, and responsibilities of a building official.

#### **B. Code Review Delegation Request**

Agencies must support their requests for authority to self-perform building code reviews of project drawings and specifications and/or building code inspections of construction with the following information:

1. The training and experience of the personnel that will perform the reviews showing they are sufficiently trained and experienced in the application of the building codes to design and construction;
2. Measures that the Agency will take to ensure that the in-house code reviewers will be allowed to apply and enforce the requirements of the building codes without influence or pressure from their supervisors or anyone in authority over them; and
3. A list of all books, codes, and manuals in the Agency's reference library showing that the code review staff have ready access to the applicable codes and standards listed in Chapter 5 of this manual.

#### **C. Agency Qualifications for Code Review Delegation**

1. Employee in Responsible Charge of Code Compliance: The employee that the Agency will place in responsible charge of building code compliance must be:
  - a. A SC licensed Architect with significant experience in building design and construction;
  - b. A SC licensed Professional Engineer with significant experience in building design and construction;
  - c. An International Code Council (ICC) Certified Building Official; or
  - d. An International Code Council (ICC) Certified Building Code Official.
2. Qualifications of Staff: For comprehensive review and/or inspection authority, the Agency's building code review staff, including the individual in responsible charge, should collectively possess the following qualifications:
  - a. SC registered Architect or ICC certified Building Code Official;
  - b. SC licensed professional Civil/Structural Engineer or ICC certified Building Code Official;
  - c. SC licensed professional Mechanical Engineer or both an ICC certified Mechanical Code Official and Plumbing Code Official;
  - d. SC licensed Electrical Engineer, or ICC certified Electrical Code Official.

#### **D. OSE Review**

1. OSE will review the Agency's construction project execution practices and make delegation recommendations based on the following criteria:
  - a. Demonstrated need for the certification;
  - b. Evaluation of compliance with all of the applicable codes as outlined in Chapter 5; and
  - c. Qualifications of the staff assigned to the code review and enforcement process.
2. If after review of the Agency's request for delegated code review and/or inspection authority, OSE agrees to do so, OSE will send the Agency's lead reviewer a letter setting the extent of the delegation of authority.
3. In no event will delegation be for longer than two years. The review staff's performance in this two-year period will be a major factor in determining whether to delegate code review and/or inspection authority for an additional two years.
4. Failure to adequately perform will justify OSE in revoking delegated code review and/or inspection authority.

# SE-210 INVITATION FOR PROFESSIONAL SERVICES

**AGENCY/OWNER:** \_\_\_\_\_  
**PROJECT NAME:** \_\_\_\_\_  
**PROJECT NUMBER:** \_\_\_\_\_  
**PROJECT LOCATION:** \_\_\_\_\_  
**DESCRIPTION OF PROJECT / PROFESSIONAL SERVICES:** \_\_\_\_\_  
**RESUME DEADLINE DATE:** \_\_\_\_\_  
**ANTICIPATED PROJECT DELIVERY METHOD:** \_\_\_\_\_ N/A

The Agency/Owner requests qualifications from firms interested in providing professional services for the project listed above. Any questions concerning this solicitation must be addressed to the Agency Project Coordinator listed below.

**RESUME DEADLINE TIME:** \_\_\_\_\_ **NUMBER OF COPIES:** \_\_\_\_\_

**RESUME DELIVERY ADDRESSES:**

**HAND-DELIVERY:**

**Attn:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**MAIL SERVICE:**

**Attn:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**DESCRIPTION OF PROFESSIONAL SERVICES ANTICIPATED FOR PROJECT:** \_\_\_\_\_

**OTHER SPECIAL QUALIFICATIONS REQUIRED:** \_\_\_\_\_ N/A

**ANTICIPATED CONSTRUCTION COST RANGE:** \$ \_\_\_\_\_ to \$ \_\_\_\_\_ N/A

**AGENCY PROJECT COORDINATOR:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_ **TELEPHONE:** \_\_\_\_\_

**INTERESTED FIRMS SHOULD SUBMIT THE FOLLOWING:**

1. A Current STANDARD FEDERAL FORM 330;
2. The Name and Contact Information, including Email, of a Primary Contact;
3. A Certification stating whether the Firm is a Resident of South Carolina (See SC Code §11-35-3215); and
4. Response to Selection Criteria set forth in SC Code §11-35-3220.

• **PUBLIC NOTICES:** All notices (Notice of Meetings; SE-212, Notification of Selection for Interviews; and SE-219, Notification of Selection for Contract Negotiation) shall be posted at the following location: \_\_\_\_\_

• **LICENSURE:** To be considered for selection, persons or firms must be properly licensed in accordance with the requirements of Title 40 of the SC Code of Laws, as amended, at the time of resume submission.

• To submit confidential information, see <https://procurement.sc.gov/construction/ose-confidential>.

• In accordance with the South Carolina Green Purchasing Initiative, submittals cannot exceed 20 pages, front and back, including covers, which must be soft – no hard notebooks. The Standard Federal Form 330 is not included in this page count.

• All written communications with parties submitting information will be via email. Agency **WILL NOT** accept submittals via email.

• Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with this solicitation or the intended award or award of a contract under this solicitation may protest to the State Engineer in accordance with § 11-35-4210 at: CPO, Office of State Engineer, 1201 Main Street, Suite 600, Columbia, SC 29201. EMAIL: [protest-ose@mso.sc.gov](mailto:protest-ose@mso.sc.gov)

**APPROVED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

(OSE Project Manager)

**INSTRUCTIONS TO THE AGENCY:**

1. Submit the completed SE-210 to the OSE Project Manager in MS Word format.
2. OSE Project Manager will review and send approved copy to SCBO and the Agency.

**SE-211**

**SELECTION COMMITTEE REPORT FOR INTERVIEW SELECTION**

---

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

---

The Agency Selection Committee met on \_\_\_\_\_ (date) to review submittals for the above project. The Invitation for Professional Services (SE-210) for this project was advertised in South Carolina Business Opportunities (SCBO) starting on: \_\_\_\_\_ (date).

**FIRMS RESPONDING TO THE INVITATION FOR PROFESSIONAL SERVICES:**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
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_____	_____
_____	_____
_____	_____
_____	_____

**REASONS FOR SELECTING FIRMS TO BE INTERVIEWED:**

The firms selected to be interviewed and shown on the Notification of Selection for Interview (SE-212) were selected by the Agency Selection Committee for the following reasons:

---

**AGENCY CERTIFICATION**

I certify that the above information is correct.

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Selection Committee Chair)*

**PRINT NAME:** \_\_\_\_\_

---

**INSTRUCTIONS TO THE AGENCY:**

Submit this form with the SE-220 to the OSE Project Manager for approval.

**SE-212**

**NOTIFICATION OF SELECTION FOR INTERVIEW**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**TO ALL FIRMS RESPONDING TO THE INVITATION FOR PROFESSIONAL SERVICES IN CONNECTION WITH THE ABOVE NAMED PROJECT:**

Having reviewed the resumes submitted in response to the *Invitation for Professional Services* for the above-named Project, and having evaluated those responses and other information available in accordance with the requirements of SC Code § 11-35-3220, the Agency Selection Committee has determined that the firms listed below are deemed the most qualified to provide the required services. The below-listed firms are selected for interview:

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**AGENCY CERTIFICATION**

I certify that the above-named firms have submitted all of the information required in the *Invitation for Professional Services*; that the Agency Selection Committee conducted this selection in accordance with the requirements of the SC Consolidated Procurement Code and Regulations and the *Manual for Planning and Execution of State Permanent Improvements, Part II*, and that the Committee selected the above-named firms for interview and priority ranking.

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Selection Committee Chair)*

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Submit a copy of the completed SE-212 to the OSE Project Manager.
2. Send a copy of the completed SE-212 to all firms who responded to the Invitation.
3. Retain the original in the Agency's procurement file.

**SE-214****PROFESSIONAL SERVICES SELECTION COMMITTEE  
CONFIDENTIALITY AND CONFLICT OF INTEREST POLICY**

AGENCY: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

The Agency and Selection Committee acknowledges the importance of protecting the public's trust in State Procurement. It is, therefore, the policy of the Agency, and this Selection Committee to abide by all laws, regulations, and policies regarding the avoidance of conflict of interest and the preservation of confidentiality. In order to assure a fair selection process that potential and actual offerors and the public trust, the Selection Committee for this project adopts the following policy:

**CONFIDENTIALITY OF INFORMATION**

Prior to the issuance of an award or notification of intent to award, whichever is earlier, Selection Committee members shall not engage in conduct that:

1. Favors one offeror over another;
2. Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;
3. Reveals an offeror's price without that offeror's permission;
4. Reveals the names of individuals providing reference information about an offeror's past performance; or
5. Knowingly furnishes source selection information to anyone other than the responsible procurement officer. "Source selection information" means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (a) proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (b) source selection plans, (c) technical evaluation plans, (d) technical evaluations of proposals, (e) cost or price evaluations of proposals, (f) information regarding which proposals are determined to be reasonably susceptible of being selected for award, (g) rankings of responses, proposals, or competitors, (h) reports, evaluations of source selection panels or evaluation panels, (i) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

**CONFIDENTIALITY OF INFORMATION CERTIFICATION**

I fully understand the confidential nature of the procurement process, including the evaluation of proposals and the selection of potential contractors. By my signature below, I agree to:

1. Return all evaluation-related materials to the Agency Project Manager;
2. Refuse to discuss these materials or the evaluation proceedings with any individual not directly involved in the evaluation; and,
3. Refer all inquiries or contacts concerning any aspect of the procurement process to the Chair of the Selection Committee.

I understand that any actual or apparent conflict of interest or breach of confidentiality, however innocent, may result in my removal from the Selection Committee.

**CONFLICT OF INTEREST CERTIFICATION**

I have been selected to serve on the Selection Committee for the above project. By my signature below, I hereby certify:

1. To the best of my knowledge and belief, no conflict of interest exists that:
  - A. diminishes my capacity to impartially and objectively review the proposals submitted;
  - B. has the potential to result in a biased opinion or unfair advantage; or
  - C. prevents me from evaluating any proposal submitted solely on its merits and in accordance with the evaluation criteria.
2. To the best of my knowledge and belief, I have no apparent conflict of interest that, in the eyes of a reasonable person, may give the appearance of the possibility of partiality in the performance of my duties in this acquisition.
3. In determining whether any conflict of interest exists, I have considered all of the following factors that might place me in a position of conflict, actual or apparent, with the evaluation proceedings:
  - A. my relationship with any potential contractor, subcontractor or direct competitor of any potential contractor under consideration by the evaluation committee;
  - B. my stocks, bonds, and other financial interests or commitments;
  - C. my employment and business arrangements (past, present, and under consideration); and
  - D. to the extent known by me, the financial interests and employment and business arrangements of members of my immediate family.
4. I have a continuing obligation to disclose any circumstance that may create an actual or apparent conflict of interest. If I learn of any such conflict, I will report it immediately to the Procurement Officer. I will perform no more duties related to the evaluation of proposals until I receive instructions on the matter.
5. I have read and understand the requirements of the Ethics, Governmental Accountability, and Campaign Reform Act (State Ethics Act, Title 8, Chapter 13 of the SC Code of Laws. <http://www.scstatehouse.gov/code/title8.php>).

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

**SE-215  
PROFESSIONAL SERVICES SELECTION COMMITTEE MEMBER  
A/E EVALUATION**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

FIRMS INTERVIEWED	
A.	E.
B.	F.
C.	G.
D.	H.

EVALUATION CRITERIA		Ranking Range	FIRMS							
			A	B	C	D	E	F	G	H
a)	Past Performance									
b)	Ability of Professional Personnel									
c)	Demonstrated Ability to Meet Time and Budget Requirements									
d)	Location and Knowledge of Locality of the Project if the Application of this Criterion Leaves an Appropriate Number of Qualified Firms, given the Nature and Size of the Project									
e)	Recent, Current and Projected Work Load of the Firm									
f)	Creativity and Insight Related to the Project									
g)	Related Experience on Similar Projects									
h)	Volume of Work Awarded by the Using Agency to the Person or Firm During the Previous Five Years, with the Objective of Effectuating an Equitable Distribution of Contracts by the State Among Qualified Firms including Minority Business Enterprises Certified by the SC Office of Small and Minority Business Assistance and Firms that have not had Previous State Work.									
i)	Any Other Special Qualification Required Pursuant to the Solicitation of the Using Agency									
<b>TOTAL POINTS</b> <i>(Use whole numbers only and break all ties before ranking)</i>										
<b>RANKING OF FIRMS (1,2,3...) (Transfer to SE-217)</b>										

EVALUATOR CERTIFICATION	
I hereby certify that I attended all the interviews held for this Professional Services procurement. All of the firms were evaluated and ranked by me based on the Evaluation Criteria listed above and no other criteria were used.	
<b>EVALUATOR NAME:</b>	<b>DATE:</b>
<b>SIGNATURE:</b>	



**SE-217**

**PROFESSIONAL SERVICES SELECTION COMMITTEE SUMMARY**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

FIRMS INTERVIEWED	
A.	E.
B.	F.
C.	G.
D.	H.

COMMITTEE MEMBERS <i>(Insert Names)</i>		RANKING OF FIRMS							
		A	B	C	D	E	F	G	H
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
<b>TOTAL</b>									
If there is a tie in the Total between 2 or more firms, insert the sum of the raw scores (Total Points) of the tied firms from the SE-215s									
RANKING BY COMMITTEE (1,2,3...) <i>(considering the Raw Score, if needed)</i>									

<b>SELECTION COMMITTEE CHAIR CERTIFICATION:</b>	
The Agency Selection Committee (Committee) has reviewed the submittals of firms in response to the <i>Invitation for Professional Services</i> , selected firms for interview, conducted interviews, and ranked all firms interviewed in accordance with the requirements of Title 11, Chapter 35, Article 9, Subarticle 5 of the South Carolina Code of Laws. The Committee evaluated and ranked all firms interviewed based on only the mandatory criteria set forth in SC Code § 11-35-3220(5) and additional Criteria, if any, set forth in the Invitation.	
<b>COMMITTEE CHAIR NAME:</b>	<b>DATE:</b>
<b>COMMITTEE CHAIR TITLE:</b>	
<b>COMMITTEE CHAIR SIGNATURE:</b>	

**SE-219**  
**NOTIFICATION OF SELECTION FOR CONTRACT NEGOTIATION**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**POSTING DATE:** \_\_\_\_\_

Notice is hereby given that the Agency Selection Committee has, in accordance with the requirements of SC Code § 11-35-3220, the *Manual for Planning and Execution of State Permanent Improvement Projects, Part II*, and the solicitation documents, reviewed the qualifications of interested firms and determined the below listed firm to be the most qualified firm for this project. The Agency hereby announces its intent to negotiate a contract with the following firm:

**NAME OF FIRM SELECTED:** \_\_\_\_\_

**DATE OF INTERVIEWS:** \_\_\_\_\_

**RIGHT TO PROTEST (SC Code § 11-35-4210)**

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this contract may protest within ten (10) days of the date the Notice of Intent to Negotiate is posted. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided.

PROTEST - CPO ADDRESS - OSE: Any protest must be addressed to the Chief Procurement Officer for Construction, Office of State Engineer, and submitted in writing (a) by email to: [protest-ose@mmo.sc.gov](mailto:protest-ose@mmo.sc.gov), (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the e-mail address from which you sent your protest.

**BY:** \_\_\_\_\_

*(Signature of Agency Head or Designee)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Post a copy of the SE-219 (as announced at the interviews).
2. Send a copy of the SE-219 to the OSE Project Manager.
3. Send a copy of the SE-219 to all firms that responded to the Invitation.
4. Retain the original SE-219 in the Agency's procurement file.

SE-220

**REQUEST FOR AUTHORITY TO EXECUTE A  
PROFESSIONAL SERVICES CONTRACT**

AGENCY: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

CONTRACT IS SUBJECT TO TWO-PART JBRC APPROVAL PROCESS: YES  NO

**FIRM SELECTED**

NAME: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_

EMAIL: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

**BUDGETARY INFORMATION**

1. TOTAL PROJECT BUDGET: PIP (enter latest A-1 "Total Project Budget") .....\$ \_\_\_\_\_

Non-PIP (enter Agency's project budget) .....\$ \_\_\_\_\_

2. CONSTRUCTION BUDGET FOR THIS CONTRACT:

(including Construction Contingency): .....N/A  .....\$ \_\_\_\_\_

3. BASIC SERVICES FEE FOR THIS CONTRACT: .....\$ \_\_\_\_\_

4. ADDITIONAL SERVICES FEE FOR THIS CONTRACT: .....\$ \_\_\_\_\_

5. ESTIMATED REIMBURSABLES FOR THIS CONTRACT: .....\$ \_\_\_\_\_

6. TOTAL CONTRACT AMOUNT (sum of #3, #4 and #5): .....\$ \_\_\_\_\_

**AGENCY CERTIFICATION AND REQUEST**

I certify that the Agency Selection Committee conducted this Professional Services selection in accordance with the requirements of the SC Consolidated Procurement Code and the *Manual for Planning and Execution of State Permanent Improvements-Part II*, and that the Agency has authorized, unencumbered funds available for obligation to this contract. Pursuant to SC Code § 11-35-3220(9), I request the Office of State Engineer's approval to execute the attached contract for professional services in support of the above-named Project.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

(Signature of Agency Representative)

PRINT NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

(OSE Project Manager)

**SUBMIT THE FOLLOWING DOCUMENTS TO OSE:**

- 1. SE-220
- 2. Copy of SE-211
- 3. Copy of SE-212
- 4. Copy of signed SE-214 for each Committee member
- 5. Copy of all SE-215s and the SE-217
- 6. Copy of SE-219
- 7. Copy of proposed Contract signed by firm selected but NOT signed by the Agency

**SE-230**

**TRANSMITTAL OF SMALL PROFESSIONAL SERVICES CONTRACT**

*FOR INFORMATION ONLY*

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**FIRM SELECTED**

**NAME:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_ **TELEPHONE:** \_\_\_\_\_

**BUDGETARY INFORMATION**

**1. TOTAL PROJECT BUDGET: PIP** (enter latest A-1 "Total Project Budget") .....\$ \_\_\_\_\_

**Non-PIP** (enter Agency's project budget) .....\$ \_\_\_\_\_

**2. CONSTRUCTION BUDGET FOR THIS CONTRACT:**

(including Construction Contingency): .....N/A  .....\$ \_\_\_\_\_

**3. TOTAL BASIC AND ADDITIONAL SERVICES FEES FOR THIS CONTRACT:**

(cannot exceed \$25,000.) .....\$ \_\_\_\_\_

**4. ESTIMATED REIMBURSABLES FOR THIS CONTRACT:** .....\$ \_\_\_\_\_

**5. TOTAL CONTRACT AMOUNT:** (sum of #3 and #4).....\$ \_\_\_\_\_

**6. SUM OF ALL FEES PAID TO THIS FIRM IN THE PAST 24 MONTHS,**

**EXCLUDING REIMBURSABLES:** (cannot exceed \$75,000.) .....\$ \_\_\_\_\_

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

*(Signature of Agency Representative)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**SUBMIT THE FOLLOWING DOCUMENTS TO OSE:**

- 1. SE-230
- 2. Copy of signed proposal with SE-240 attached or SE-235 with sign proposal attached.

**OSE PM:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

SE-232

AMENDMENT NO.: \_\_\_\_\_

**TRANSMITTAL OF AMENDMENT TO SMALL PROFESSIONAL SERVICES CONTRACT**  
*FOR INFORMATION ONLY*

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**NAME OF FIRM:** \_\_\_\_\_

**BUDGETARY INFORMATION** *(Complete ALL 4 items)*

1. <b>TOTAL PROJECT BUDGET:</b>	<b>PIP</b> <i>(enter latest A-1 "Total Project Budget")</i>		
	<b>Non-PIP</b> <i>(enter Agency's project budget)</i>		
2. <b>BASIC &amp; ADDITIONAL SERVICES FEE:</b>	Contract Fees Prior to This Amendment		
	Change in Fees Per This Amendment		
	<b>Total Revised Additional Services Fee:</b>		\$ 0.00
3. <b>REIMBURSABLE EXPENSES:</b>	Contract Amount Prior to This Amendment		
	Change in Amount Per This Amendment		
	<b>Total Revised Reimbursable Expenses:</b>		\$ 0.00
4. <b>TOTAL CONTRACT AMOUNT:</b>	Total Contract Prior to This Amendment	\$ 0.00	
	Change in Amount Per This Amendment	\$ 0.00	
	<b>Total Revised Contract Amount:</b>		\$ 0.00
5. <b>SUM OF ALL FEES PAID TO THIS FIRM IN THE PAST 24 MONTHS, EXCLUDING REIMBURSABLES</b> <i>(cannot exceed \$75,000.):</i>			

**REASONS FOR AMENDMENT:** *(Insert reason in space provide below)*

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Agency Representative)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**SUBMIT THE FOLLOWING DOCUMENTS TO OSE:**

1. SE-232
2. Copy of signed amendment.

**OSE PM:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

SE-260

AMENDMENT NO.: \_\_\_\_\_

**REQUEST FOR AUTHORITY TO AMEND A PROFESSIONAL SERVICES CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**NAME OF FIRM:** \_\_\_\_\_

**BUDGETARY INFORMATION (Complete ALL 4 items)**

<b>1. TOTAL PROJECT BUDGET:</b>	<b>PIP</b> (enter latest A-1 "Total Project Budget")		
	<b>Non-PIP</b> (enter Agency's project budget)		
<b>2. BASIC SERVICES FEE:</b>	Contract Fee Prior to This Amendment		
	Change in Fee Per This Amendment		
	<b>Total Revised Basic Services Fee:</b>		\$ 0.00
<b>3. ADDITIONAL SERVICES FEE:</b>	Contract Fee Prior to This Amendment		
	Change in Fee Per This Amendment		
	<b>Total Revised Additional Services Fee:</b>		\$ 0.00
<b>4. REIMBURSABLE EXPENSES:</b>	Contract Amount Prior to This Amendment		
	Change in Amount Per This Amendment		
	<b>Total Revised Reimbursable Expenses:</b>		\$ 0.00
<b>5. TOTAL CONTRACT AMOUNT:</b>	Total Contract Prior to This Amendment	\$ 0.00	
	Change in Amount Per This Amendment	\$ 0.00	
	<b>Total Revised Contract Amount:</b>		\$ 0.00

**REASONS FOR AMENDMENT:** (Insert reason in space provide below)

**AGENCY CERTIFICATION AND REQUEST**

I hereby certify that the Agency has reviewed the attached modification proposal, including any cost and pricing data provided in accordance with the requirements of the SC Consolidated Procurement Code and the *Manual for Planning and Execution of State Permanent Improvements-Part II*, and has determined that the proposed fee adjustment is fair and reasonable. I further certify that the Agency has authorized, unencumbered funds available for obligation to this contract, and that it is in the best interest of the Agency to enter into this Agreement to revise the scope of services to be rendered under the aforementioned Project's original Contract and as allowed therein. I certify that the revised scope is within the approved scope and budget for this Project. I hereby request the approval of the Office of State Engineer to execute the attached amendment to the contract for professional services in support of the above-named Project.

- Change is within Agency Architect-Engineer Contract Amendment Certification of: \$ \_\_\_\_\_
- Change is not within Agency Architect-Engineer Contract Amendment Certification of: \$ \_\_\_\_\_

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
 (Signature of Agency Representative)

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**APPROVED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
 (OSE Project Manager)

**INSTRUCTIONS TO THE AGENCY:**

- AMENDMENTS REQUIRING OSE APPROVAL:**  
 Submit SE-260 and supporting cost and schedule data to OSE Project Manager for review and approval.
- AMENDMENTS APPROVED BY AGENCY:**  
 Submit executed SE-260 and supporting cost and schedule data to OSE Project Manager for information.

**SE-271**

**DESIGN DOCUMENT TRANSMITTAL FORM – DESIGN-BID-BUILD**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**TO:** \_\_\_\_\_  
*(OSE Project Manager)*

**CC:** \_\_\_\_\_  
*(Agency Project Manager)*

**FROM:** \_\_\_\_\_  
*(Person's Name)*  
 \_\_\_\_\_  
*(Firm Name, if applicable)*

**DATE:** \_\_\_\_\_

Transmitted herein are \_\_\_\_\_ copies of the following documents for the above referenced project as required by Chapter 5 of the *Manual for Planning and Execution of State Permanent Improvement–Part II* (check applicable items).

		<input type="checkbox"/> <b>SCHEMATIC DESIGN DOCUMENTS</b>	<input type="checkbox"/> <b>CONSTRUCTION DOCUMENTS</b>	<input type="checkbox"/> <b>BID DOCUMENTS</b>
1.	Site Plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Floor Plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Life Safety Plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	Code Criteria (OSE Code Tables)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	ASHRAE 90.1 Worksheet	N/A	<input type="checkbox"/>	N/A
6.	Complete Set of Drawings & Project Manual	N/A	<input type="checkbox"/>	<input type="checkbox"/> (signed & sealed)
7.	Form SE-310 or SE-655, Pages 1 & 2	N/A	<input type="checkbox"/>	N/A
8.	Draft of Proposed Construction Contract (May use Sample form on OSE website filled in by hand in accordance with Guide in Appendix B.1)	N/A	<input type="checkbox"/>	N/A
9.	Written responses to previous OSE Comments	N/A	<input type="checkbox"/>	<input type="checkbox"/>
10.	Current Estimate of Construction Cost	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11.	List of required Permits and Approvals	<input type="checkbox"/>	<input type="checkbox"/>	N/A
12.	Status of Required Permits and Approvals	N/A	<input type="checkbox"/>	<input type="checkbox"/>

**SE-235****PROFESSIONAL SERVICES INCIDENTAL SERVICES CONTRACT****AGENCY:** \_\_\_\_\_**PROJECT NAME:** \_\_\_\_\_**PROJECT NUMBER:** \_\_\_\_\_

THIS AGREEMENT is made this the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand \_\_\_\_\_ by and between

**NAME:** \_\_\_\_\_**ADDRESS:** \_\_\_\_\_

hereinafter called the "Agency", and

**NAME:** \_\_\_\_\_**ADDRESS:** \_\_\_\_\_

hereinafter called the "A/E".

NOWHEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Agency and A/E (hereinafter jointly referred to as the "parties") agree as follows:

**A. CONTRACT TERM**

1. The effective date of this agreement shall commence as of the date at the top of this page and the term shall extend until \_\_\_\_\_, 20\_\_\_\_\_, unless extended by amendment or waiver.

**B. CONTRACT DOCUMENTS**

1. Documents forming a part of the contract are, in order of precedence:
  - a. This Contract, SE-235.
  - b. A/E Proposal describing services to be provided for this project and the associated fees. Reimbursable expenses shall be listed separately in the proposal as a not-to-exceed amount.
  - c. Invitation for Professional Services, if applicable;
  - d. Supplemental Conditions to this Contract, if applicable;
  - e. The following other documents:  
\_\_\_\_\_

2. The contract is the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, whether written or oral.

**C. PAYMENT**

1. A/E may make application for payment for services performed. Reimbursable expenses (not to be included in the fee) are not to exceed the estimated amount shown in the proposal.
2. The A/E shall not invoice for services more often than monthly for work performed and reimbursable expenses incurred during that period.
3. The Agency shall make payments to the A/E of undisputed amounts due for services performed by the A/E, within twenty-one (21) days of receipt of the A/E's invoice. The A/E shall make progress payments to the consultants within seven (7) days of the receipt by the A/E of each payment from the Agency.

**D. TERMINATION**

1. Agency Right of Suspension: The Agency may, at any time, suspend the work, in whole or in part, with or without cause for such period of time as determined by the Agency. Except in the event of suspension due to a default of the A/E, the amount payable to the A/E will be equitably adjusted to reflect reasonable costs actually incurred by the A/E due to delay or interruption resulting from such suspension.



2. Agency Right of Termination:
  - a. Termination for Cause: If the A/E defaults, persistently fails or neglects to perform the services in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Agency shall provide written notice of such default, failure, or neglect to the A/E. If the A/E fails to cure such default, failure, or neglect within fifteen days from receipt of the Agency's notice, the Agency may, without prejudice to any other right or remedy the Agency may have, terminate the Contract.
  - b. Termination for Convenience: The Agency may, for its convenience, terminate all or any portion of the work or terminate this Contract by ten (10) days written notice stating the effective date of the termination. Thereafter, the Agency shall pay the A/E for those services actually performed before the date of termination. No payments shall be made for services not actually performed, and no payment shall be made or due for lost profits for portions of the services not actually performed.
3. A/E Right of Termination:
  - a. The A/E may terminate the contract if work is stopped through no fault of the A/E, or other persons performing work either directly or indirectly for the A/E, for a period of time exceeding 60 consecutive calendar days due to a court order or other public authority having jurisdiction; or a declared National emergency which requires the work to be stopped.
  - b. Agency Failure to Make Payment: Subject to the Agency's right to withhold payments pursuant to Part C, if the Agency fails to make payments to the A/E as set forth in Part C and any other applicable provisions of the Contract Documents, the A/E may, upon thirty (30) days prior written notice to the Agency, terminate the Contract and recover from the Agency payment for all services performed, including reasonable overhead, profit and damages applicable to the services performed through the date thereof.

#### **E. DISPUTE RESOLUTION**

Both parties shall attempt to resolve disputes through good faith negotiations.

1. All disputes, claims, or controversies relating to the Contract, that cannot be resolved through good faith negotiations between the parties shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. A/E agrees that any act by the State regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used herein, the phrase, "the State" includes the Agency and the State Fiscal Accountability Authority.
2. Interest: Payments due to the A/E and unpaid under the Contract Documents shall bear interest only if and to the extent allowed by Title 29, Chapter 6, Article 1 of the South Carolina Code of Laws. Amounts due to the Agency shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.
3. A/E consents that any papers, notices, or process necessary or proper for the initiation or continuation of any claims or controversies relating to the Contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on A/E by certified mail (return receipt requested) addressed to A/E at the address provided for the A/E's Representative or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.
4. Continuation of Work: Pending final resolution of any dispute under this Contract, the A/E will proceed diligently with the performance of its duties and obligations under the Contract Documents, and the Agency will continue to make payments of undisputed amounts in accordance with the Contract Documents.

#### **F. LIMITATION OF LIABILITY**

1. Notwithstanding any other provision of the Contract Documents, but subject to a duty of good faith and fair dealing, the A/E and Agency waive claims against each other for listed damages arising out of or relating to this Contract. This mutual waiver includes
  - a. For the Agency, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) costs suffered by a third party unable to commence work, (vi) reasonable attorneys' fees, (vii) any interest, except to the extent allowed by Part F(2) (Interest), (viii) lost revenue and profit for lost use of the property, (ix) costs resulting from lost productivity or efficiency, and (x) damages incurred by the Agency for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
  - b. For the A/E, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) reasonable attorneys' fees, (vi) any interest, except to the extent allowed by Part F(2) (Interest); (vii) unamortized equipment costs; and (viii) losses incurred by consultants used by the A/E for the types of damages the A/E has waived as against the Agency.

2. This mutual waiver is applicable, without limitation, to all listed damages due to either party’s termination in accordance with Part E. This mutual waiver is not applicable to amounts due or obligations under Part G (Indemnification).

**G. INDEMNIFICATION**

1. To the fullest extent permitted by law, the A/E shall indemnify and hold harmless the Agency and the Agency's agents and employees from and against claims, damages, losses and expenses, including, but not limited to, reasonable attorneys’ fees, arising out of or resulting from the A/E’s performance of services under this Agreement, or any Delivery Order issued pursuant to this Agreement, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the A/E, a consultant used by the A/E, anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
2. In claims against any person or entity indemnified under Part G(1) by an employee of the A/E, a consultant used by the A/E, anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable, the indemnification obligation under this Part G shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for A/E or a consultant used by the A/E under workers’ or workmen’s compensation acts, disability benefit acts, or other employee benefit acts.

**H. REPRESENTATIVES**

**1. Agency’s Representatives**

Agency designates the individual listed below as its Representative, which individual shall have the authority to bind the Agency with respect to all matters regarding the Contract and requiring the Agency’s approval or authorization:

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

The term “Agency” means the Agency or the Agency’s Representative.

**2. A/E’s Representatives**

A/E designates the individual listed below as its A/E’s Representative, which individual shall have the authority to bind the A/E with respect to all matters regarding the Contract and requiring the A/E’s approval or authorization:

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

The term “A/E” means the A/E or the A/E’s Representative.

3. Neither the Agency nor the A/E shall change their representatives without ten days written notice to the other party.

**I. INSURANCE**

1. A/E shall procure and maintain in effect during the term of this Agreement the insurance coverages described below, which insurance shall be placed with insurance companies authorized to do business in the State of South Carolina and rated A minus VII or better by the current edition of Best’s Key Rating Guide or otherwise approved by Agency.
  - a. Professional Liability Errors and Omissions Insurance including contractual liability coverage with limits of not less than \$1,000,000 per claim and \$2,000,000 aggregate. A/E shall maintain this coverage in effect during the term of this Agreement and for two years after the date of completion of services provided under this Contract. A/E shall give prompt written notice to Agency of any and all claims made against this policy during the period in which this policy is required to be maintained pursuant to this Contract.
  - b. Worker’s Compensation Insurance as required by the State of South Carolina, with Statutory Limits, and Employer’s liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

- c. Automobile Liability Insurance: Insurance Services Offices (ISO) Form CA 00 01 covering Code 1 (any auto), or if Architect has no owned automobiles, Code 8 (hired) and Code 9 (non-owned), with limits not less than \$1,000,000 per accident for bodily injury and property damage. Comprehensive Automobile Liability Insurance (owned, hired, and non-owned vehicles) with limits not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
  - d. Commercial General Liability Insurance (CGL): ISO Form CG 00 01 12 07 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury, and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.
2. A/E agrees to require its consultants to comply with the insurance provisions required of A/E pursuant to this Agreement unless A/E and Agency mutually agree to modify these requirements for consultants whose work is of relatively small scope.

#### **J. LIMITATIONS OF RESPONSIBILITY**

Unless specifically included, the A/E shall not be responsible for the failure of any consultant, sub-consultant, contractor, vendor, or other project participant, not under contract to the A/E, to fulfill contractual responsibilities to the Agency or to comply with Federal, State, or Local laws, regulations, and codes.

#### **K. WORK PRODUCTS**

The A/E grants to the Agency a non-exclusive license to re-use the A/E's Work Products prepared pursuant to this Contract. The A/E assumes no liability for the Agency's re-use under these conditions unless contracted by the Agency to assume the liability for such re-use. Consultants used by the A/E for work performed under this Contract shall be bound by the same conditions.

#### **L. MISCELLANEOUS PROVISIONS**

1. Governing Law: This Contract shall be governed by the laws of South Carolina, except its choice of law rules.
2. In the performance of its duties under this contract, the A/E shall comply with (a) the requirements of the Manual for Planning and Execution of State Permanent Improvement Projects – Part II (Manual), and (b) the SC Consolidated Procurement Code and the associated regulation. Should substantive changes to these provisions of the Manual occur during the term of this contract that result in an increase or decrease in the level of services to be provided by the A/E, the fee of the A/E shall be equitably adjusted by negotiation between the parties to reflect such increase or decrease.
3. Severability: If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.
4. No Waiver: No course of dealing or failure of the Agency and/or the A/E to enforce strictly any term, right or condition of this Contract shall be construed as a waiver of such term, right or condition. No express waiver of any term, right, or condition of this Contract shall operate as a waiver of any other term, right, or condition.
5. Rights Cumulative: Except as otherwise provided in this Contract, (i) rights and remedies available to the Agency and/or the A/E as set forth in this Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to the Agency and/or the A/E in any provision of this Contract shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.
6. Notices: Any notices required to be given under this Contract shall be in writing and shall be delivered either by (i) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the U.S. mail; (ii) a reputable messenger service or a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such messenger or courier; or (iii) personal delivery with receipt acknowledged in writing, in which case notice shall be deemed delivered when received. All notices shall be sent to the representatives identified in the Part I of the Agreement at the addresses provided therein. The foregoing addresses may be changed from time to time by notice to the other Party in the manner herein provided for.
7. Economic Conflict of Interest: The A/E shall not have or exercise any official responsibility regarding a public contract in which the A/E, or a business with which he is associated, has an economic interest. A person working for A/E shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If A/E is asked by any person to violate, or does violate, either of these restrictions, A/E shall immediately communicate such information to the procurement officer. The State may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in S.C. Code § 8-13-100.

8. **Illegal Immigration:** A/E certifies and agrees that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to A/E and its consultants or sub-consultants; or (b) that A/E and its consultants or sub-consultants are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." A/E agrees to include in any contracts with its consultants language requiring its consultants to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-consultants language requiring the sub-consultants to comply with the applicable requirements of Title 8, Chapter 14. (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov))
9. **Drug-Free Workplace:** The A/E certifies to the Agency that A/E will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.
10. **False Claims:** According to S.C. Code § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.
11. **Non-Indemnification:** Any term or condition is void to the extent it requires the State to indemnify anyone. It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations. (SC Code § 11-9-20) It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year. (SC Code § 11-1-40)
12. **Assignment:** The Agency and A/E respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements and obligations contained in this Contract. Neither party to the Contract shall assign the Contract as a whole, or in part, without written consent of the other and then only in accordance with and as permitted by SC Regulation 19-445.2180. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
13. **Open Trade (Jun 2015):** During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

**AGENCY:**

**A/E:**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**NOTE:** This contract is not to be used for Design Services for construction or for Indefinite Delivery Contracts.

**SE-240****SOUTH CAROLINA SMALL PROFESSIONAL SERVICES CONTRACT TERMS AND CONDITIONS**


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**AGENCY:** \_\_\_\_\_
**PROJECT NAME:** \_\_\_\_\_**PROJECT NUMBER:** \_\_\_\_\_**A/E NAME:** \_\_\_\_\_**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

In consideration of the mutual covenants and obligations set forth herein, the Agency and A/E (hereinafter jointly referred to as the “parties”) agree to the following Terms and Conditions as they apply to the contract for the project listed above.

**A. CONTRACT DOCUMENTS**

1. Documents forming a part of this contract are, in order of precedence:
  - a. These Terms and Conditions, SE-240.
  - b. A/E Proposal describing services to be provided for this project and the associated fees. Reimbursable expenses shall be listed separately in the proposal as a not-to-exceed amount.
  - c. Supplemental Conditions, attached if applicable.
  - d. The following other documents:
   
\_\_\_\_\_
   
\_\_\_\_\_

2. The contract is the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, whether written or oral.

**B. PAYMENT**

A/E may make application for payment for services performed under this contract (and the Agency shall make payment) as agreed in the contract. Reimbursable expenses (not to be included in the fee) are not to exceed the estimated amount shown in the contract. Fees and reimbursable expenses are not to exceed the amount shown in the contract unless approved by the Agency. The A/E shall not invoice for services more often than monthly for work performed and reimbursable expenses incurred during that period. The Agency shall make payments to the A/E of undisputed amounts due for services performed by the A/E, within twenty-one (21) days of receipt of the A/E’s invoice. The A/E shall make progress payments to the consultants within seven (7) days of the receipt by the A/E of each payment from the Agency.

**C. TERMINATION**

1. Agency Right of Suspension: The Agency may, at any time, suspend the work, in whole or in part, with or without cause for such period of time as determined by the Agency. Except in the event of suspension due to a default of the A/E, the amount payable to the A/E will be equitably adjusted to reflect reasonable costs actually incurred by the A/E due to delay or interruption resulting from such suspension.
2. Agency Right of Termination:
  - a. Termination for Cause: If the A/E defaults, persistently fails or neglects to perform the services in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Agency shall provide written notice of such default, failure, or neglect to the A/E. If the A/E fails to cure such default, failure, or neglect within fifteen days from receipt of the Agency’s notice, the Agency may, without prejudice to any other right or remedy the Agency may have, terminate the Contract.
  - b. Termination for Convenience: The Agency may, for its convenience, terminate all or any portion of the work or terminate this Contract by ten (10) days written notice stating the effective date of the termination. Thereafter, the Agency shall pay the A/E for those services actually performed before the date of termination. No payments shall be made for services not actually performed, and no payment shall be made or due for lost profits for portions of the services not actually performed.

3. A/E Right of Termination:
  - a. The A/E may terminate the contract if work is stopped through no fault of the A/E, or other persons performing work either directly or indirectly for the A/E, for a period of time exceeding 60 consecutive calendar days due to a court order or other public authority having jurisdiction; or a declared National emergency which requires the work to be stopped.
  - b. Agency Failure to Make Payment: Subject to the Agency's right to withhold payments pursuant to Part D, if the Agency fails to make payments to the A/E as set forth in Part B and any other applicable provisions of the Contract Documents, the A/E may, upon thirty (30) days prior written notice to the Agency, terminate the Contract and recover from the Agency payment for all services performed, including reasonable overhead, profit and damages applicable to the services performed through the date thereof.

#### **D. DISPUTE RESOLUTION**

Both parties shall attempt to resolve disputes through good faith negotiations.

1. All disputes, claims, or controversies relating to the Contract, that cannot be resolved through good faith negotiations between the parties shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. A/E agrees that any act by the State regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used herein, the phrase, "the State" includes the Agency and the State Fiscal Accountability Authority.
2. Interest: Payments due to the A/E and unpaid under the Contract Documents shall bear interest only if and to the extent allowed by Title 29, Chapter 6, Article 1 of the South Carolina Code of Laws. Amounts due to the Agency shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.
3. A/E consents that any papers, notices, or process necessary or proper for the initiation or continuation of any claims or controversies relating to the Contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on A/E by certified mail (return receipt requested) addressed to A/E at the address provided for the A/E's Representative or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed delivered three (3) business days after deposit, postage prepaid, in the United States mail.
4. Continuation of Work: Pending final resolution of any dispute under this Contract, the A/E will proceed diligently with the performance of its duties and obligations under the Contract Documents, and the Agency will continue to make payments of undisputed amounts in accordance with the Contract Documents.

#### **E. LIMITATION OF LIABILITY**

1. Notwithstanding any other provision of the Contract Documents, but subject to a duty of good faith and fair dealing, the A/E and Agency waive claims against each other for listed damages arising out of or relating to this Contract. This mutual waiver includes
  - a. For the Agency, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) costs suffered by a third party unable to commence work, (vi) reasonable attorneys' fees, (vii) any interest, except to the extent allowed by Part D(2) (Interest), (viii) lost revenue and profit for lost use of the property, (ix) costs resulting from lost productivity or efficiency, and (x) damages incurred by the Agency for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
  - b. For the A/E, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) reasonable attorneys' fees, (vi) any interest, except to the extent allowed by Part D(2) (Interest); (vii) unamortized equipment costs; and (viii) losses incurred by consultants used by the A/E for the types of damages the A/E has waived as against the Agency.
2. This mutual waiver is applicable, without limitation, to all listed damages due to either party's termination in accordance with Part C. This mutual waiver is not applicable to amounts due or obligations under Part F (Indemnification).

**F. INDEMNIFICATION**

1. To the fullest extent permitted by law, the A/E shall indemnify and hold harmless the Agency and the Agency's agents and employees from and against claims, damages, losses and expenses, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from the A/E's performance of services under this Agreement provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the A/E, a consultant used by the A/E, anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
2. In claims against any person or entity indemnified under Part F(1) by an employee of the A/E, a consultant used by the A/E, anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable, the indemnification obligation under this Part F shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for A/E or a consultant used by the A/E under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

**G. INSURANCE**

1. A/E shall procure and maintain in effect during the term of this Agreement the insurance coverages described below, which insurance shall be placed with insurance companies authorized to do business in the State of South Carolina and rated A minus VII or better by the current edition of Best's Key Rating Guide or otherwise approved by Agency.
  - a. Professional Liability Errors and Omissions Insurance with limits of not less than \$1,000,000 per claim and in the aggregate. A/E shall maintain this coverage in effect during the term of this Agreement and for two (2) years after the date of completion of services provided under this Contract. A/E shall give prompt written notice to Agency of any and all claims made against this policy during the period in which this policy is required to be maintained pursuant to this Contract.
  - b. Worker's Compensation Insurance with statutory benefits and limits which shall fully comply with all State and Federal requirements and have limits not less than \$500,000 per accident, \$500,000 per disease and \$500,000 policy limit on disease..
  - c. Automobile Liability Insurance: Insurance Services Offices (ISO) Form CA 00 01 covering Code 1 (any auto), or if A/E has no owned automobiles, Code 8 (hired) and Code 9 (non-owned), with limits not less than \$1,000,000 per accident for bodily injury and property damage. Comprehensive Automobile Liability Insurance (owned, hired, and non-owned vehicles) with limits not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
  - d. Commercial General Liability Insurance (CGL): ISO Form CG 00 01 12 07 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury, and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.
2. A/E agrees to require Subconsultants to comply with the insurance provisions required of A/E pursuant to this Agreement unless A/E and Agency mutually agree to modify these requirements for Subconsultants whose work is of relatively small scope. A/E agrees that it will contractually obligate its Subconsultants to advise A/E promptly of any changes or lapses of the requisite insurance coverages and A/E agrees to promptly advise Agency of any such notices A/E receives from its Subconsultants. A/E agrees that it will contractually obligate its Subconsultants to indemnify and hold harmless Agency to the same extent that A/E is required to do so as provided in this Agreement.

**H. CONSTRUCTION COST**

The A/E shall not be responsible for, nor have control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others, not under contract to the A/E, to meet Delivery Order schedules. The A/E's opinion of probable costs and project schedules are to be made on the basis of the A/E's best judgment, experience, and qualifications as a professional. The A/E does not guarantee that proposals, bids, or actual costs will not vary from the A/E's opinion of probable costs or that the actual schedules will not vary from the A/E's projected schedules.

**I. LIMITATIONS OF RESPONSIBILITY**

Unless specifically included in this contract, the A/E shall not be responsible for: 1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs; 2) the failure of any contractor, sub-contractor, vendor, or other project participant, not under contract to the A/E, to fulfill contractual responsibilities to the Agency or to comply with Federal, State, or Local laws, regulations, and codes; or 3) procuring permits, certificates, and licenses required for construction other than design-related construction permits required by the *Manual for Planning and Execution of State Permanent Improvements, Part II*.

**J. WORK PRODUCTS**

The A/E grants to the Agency a non-exclusive license to re-use the A/E's Work Products prepared pursuant to this Contract. The A/E assumes no liability for the Agency's re-use under these conditions unless contracted by the Agency to assume the liability for such re-use. Consultants used by the A/E for work performed under this Contract shall be bound by the same conditions.

**K. MISCELLANEOUS PROVISIONS**

1. **Governing Law:** This Contract shall be governed by the laws of South Carolina, except its choice of law rules.
2. **In the performance of its duties under this contract,** the A/E shall comply with (a) the requirements of the Manual for Planning and Execution of State Permanent Improvement Projects – Part II (Manual), and (b) the SC Consolidated Procurement Code and the associated regulation. Should substantive changes to these provisions of the Manual occur during the term of this contract that result in an increase or decrease in the level of services to be provided by the A/E, the fee of the A/E shall be equitably adjusted by negotiation between the parties to reflect such increase or decrease.
3. **Severability:** If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.
4. **No Waiver:** No course of dealing or failure of the Agency and/or the A/E to enforce strictly any term, right or condition of this Contract shall be construed as a waiver of such term, right or condition. No express waiver of any term, right, or condition of this Contract shall operate as a waiver of any other term, right, or condition.
5. **Rights Cumulative:** Except as otherwise provided in this Contract, (i) rights and remedies available to the Agency and/or the A/E as set forth in this Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to the Agency and/or the A/E in any provision of this Contract shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.
6. **Notices:** Any notices required to be given under this Contract shall be in writing and shall be delivered either by (i) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the U.S. mail; (ii) a reputable messenger service or a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such messenger or courier; or (iii) personal delivery with receipt acknowledged in writing, in which case notice shall be deemed delivered when received. All notices shall be sent to the representatives identified in the Part I of the Agreement at the addresses provided therein. The foregoing addresses may be changed from time to time by notice to the other Party in the manner herein provided for.
7. **Economic Conflict of Interest:** The A/E shall not have or exercise any official responsibility regarding a public contract in which the A/E, or a business with which he is associated, has an economic interest. A person working for A/E shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If A/E is asked by any person to violate, or does violate, either of these restrictions, A/E shall immediately communicate such information to the procurement officer. The State may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in SC Code § 8-13-100.
8. **Illegal Immigration:** A/E certifies and agrees that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to A/E and its consultants or sub-consultants; or (b) that A/E and its consultants or sub-consultants are in compliance with Title 8, Chapter 14. Pursuant to SC Code § 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." A/E agrees to include in any contracts with its consultants language requiring its consultants to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-consultants language requiring the sub-consultants to comply with the applicable requirements of Title 8, Chapter 14. (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)).
9. **Drug-Free Workplace:** The A/E certifies to the Agency that A/E will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.
10. **False Claims:** According to SC Code § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.



11. **Non-Indemnification:** Any term or condition is void to the extent it requires the State to indemnify anyone. It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations (SC Code § 11-9-20). It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year (SC Code §11-1-40)
12. **Enforcement and Interpretation of Building Codes:** As required by Title 10, Chapter 1, Section 180 of the South Carolina Code of Laws, as amended, OSE shall determine the enforcement and interpretation of all building codes and referenced standards on state buildings. The A/E shall refer any questions, comments, or directives from local officials to the Agency and OSE for resolution. When the amount of construction work covered by the design documents prepared under this Contract exceeds the construction procurement certification of the Agency, the A/E shall submit Schematic Design Documents and Construction Documents to OSE for review and approval before releasing the documents for construction. (The A/E may find Agency construction certification limits on Procurement Services website at <http://procurement.sc.gov/PS/agency/PS-agency-audits.phtm> )
13. **Assignment:** The Agency and A/E respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements and obligations contained in this Contract. Neither party to the Contract shall assign the Contract as a whole, or in part, without written consent of the other and then only in accordance with and as permitted by Regulation 19-445.2180 of the South Carolina Code of Regulations, as amended. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
14. **Open Trade Representation (Jun 2015) -** By signing this Agreement, A/E represents that A/E is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300. During the contract term, including any renewals or extensions, A/E will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

**AGENCY:**

**A/E:**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

# DESIGN AND CONSTRUCTION DOCUMENTS AND FORMS

## DESIGN-BID-BUILD

### A. AUTHORITY

1. SC Code § 11-35-2010 (2) provides that the Chief Procurement Officer may adopt contracting documents for use in procurement of design and construction services.
2. SC Code § 11-35-3040 Permits state construction contracts to include provisions for adjustments in prices, time of performance, and appropriate remedies for delay or non-performance, termination for default, and termination for convenience.
3. SC Regulation 19-445.2145(E) sets forth-mandatory contract document for use on design-bid-build projects.

### B. PROFESSIONAL SERVICES

1. **Land Surveyor Contract:** The Agency may use a letter contract written for each individual project. OSE must approve the format and description of services.
2. **Architect-Engineer:**
  - a. **CONTRACTS GREATER THAN \$25,000:** The Agency must use AIA Document B101 – 2007 Standard Form of Agreement Between Owner and Architect - South Carolina Division of Procurement Services, Office of State Engineer Version.
  - b. **CONTRACTS FOR \$25,000 OR LESS:** The Agency should use a letter contract written for each individual project with the SE-240 - South Carolina Small Professional Services Contract Terms and Conditions attached.
  - c. **CONSTRUCTION MANAGER AGENT (CMa):** For the CMa, it should use AIA Document C132-2009 – Standard Form of Agreement Between Owner and Construction Manager as Advisor - South Carolina Division of Procurement Services, Office of State Engineer Version.
  - d. **FORMS FOR USE IN PROCURING AND ADMINISTERING PROFESSIONAL SERVICES:** The Agency should use the following OSE Forms:
    - 1) SE-210, Invitation for Professional Services
    - 2) SE-211, Selection Committee Report for Interview Selection
    - 3) SE-212, Notification of Selection for Interview
    - 4) SE-214, Professional Services Selection Committee - Confidentiality & Conflict of Interest Policy
    - 5) SE-215, Professional Services Selection Committee Member – A/E Evaluation
    - 6) SE-217, Professional Services Selection Committee Summary
    - 7) SE-219, Notification of Selection for Contract Negotiation
    - 8) SE-220, Request for Authority to Execute a Professional Services Contract
    - 9) SE-230, Transmittal of Small Professional Service Contract – *For Information Only*
    - 10) SE-260, Request for Authority to Amend a Professional Services Contract
    - 11) SE-271, Design Documents Transmittal Form

### C. CONSTRUCTION CONTRACTS GREATER THAN \$50,000: The Agency must use the following:

1. Instructions to Bidders: AIA A701-1997 Instructions to Bidders - South Carolina Division of Procurement Services, Office of State Engineer Version.
2. Contract for Construction: AIA Document A101-2007 Standard Form of Agreement between Owner and Contractor - South Carolina Division of Procurement Services, Office of State Engineer Version.
3. General Conditions of the Contract for Construction: AIA Document A201-2007 General Conditions of the Contract for Construction- South Carolina Division of Procurement Services, Office of State Engineer Version.
4. Forms for construction procurement and administration:
  - a. OSE Forms:
    - 1) SE-310, Invitation for Design-Bid-Build Construction Services
    - 2) SE-330, Lump Sum Bid Form
    - 3) SE-332, Unit Price Bid Form

- 4) AIA A701-1997 Instructions to Bidders - South Carolina Division of Procurement Services, Office of State Engineer Version (Combined AIA and OSE form).
- 5) AIA Document A101-2007 Standard Form of Agreement between Owner and Contractor - South Carolina Division of Procurement Services, Office of State Engineer Version (Combined AIA and OSE form).
- 6) AIA Document A201-2007 General Conditions of the Contract for Construction- South Carolina Division of Procurement Services, Office of State Engineer Version (Combined AIA and OSE form).
- 7) Bid Bond – *Note: Use AIA A310*
- 8) SE-355, Performance Bond
- 9) SE-357, Labor & Material Payment Bond
- 10) SE-360, Request for Concurrence in Posting Notice of Intent to Award
- 11) SE-370, Notice of Intent to Award
- 12) SE-380, Change Order to Construction Contract
- 13) SE-390, Notice to Proceed – Construction Contract

**b. AIA Forms:**

- 1) A310-Latest Edition, Bid Bond
- 2) G702-1992, Application and Certificate for Payment
- 3) G703-1992, Continuation Sheet (*for application for payment*)
- 4) G706-1994, Contractor's Affidavit of Payment of Debts and Claims
- 5) G707-1994, Consent of Surety to Final Payment
- 6) G714-2001, Construction Change Directive
- 7) G715-1991, Instruction Sheet and Attachment for ACORD Certificate of Insurance

**D. REQUIRED OSE PERMITS AND CERTIFICATES:** The Agency must use the following OSE Forms:

1. SE-510, Permit to Develop in a Flood Hazard Area (*only required when developing in a flood hazard area*)
2. SE-550, Certificate of Substantial Completion
3. SE-560, Certificate of Final Completion
4. SE-580, Building/Construction Permit
5. SE-585, Certificate of Occupancy/Use

**E. SOLE SOURCE AND EMERGENCY PROCUREMENTS:** The Agency must use the following OSE Forms:

1. MMO/OSE - 102, Justification for Sole Source Procurement
2. MMO/OSE - 103, Justification for Emergency Procurement

**F. MISCELLANEOUS OSE FORMS**

1. **Professional Services** (an Agency planning to use these forms in its contract administration should so state in Article 13 of AIA Document B101-2007 - South Carolina Division of Procurement Services, Office of State Engineer Version).
  - a. SE-290, Professional Services Performance Evaluation
  - b. SE-295, Assessment of Damages – Professional Services Contract
2. **Construction Services** (an Agency planning to use any of these forms in its contract administration should so state in AIA Document A201-2007 General Conditions of the Contract for Construction - South Carolina Division of Procurement Services, Office of State Engineer Version).
  - a. SE-331, Quote Form
  - b. SE-350, Questionnaire for Contractors
  - c. SE-395, Assessment of Contract Liquidated Damages
  - d. SE-397, Construction Contractor Performance Evaluation

**OSE FORMS**  
**DESIGN-BID-BUILD**  
(In Alpha-Numeric Order)

1. AIA A701-1997 Instructions to Bidders - South Carolina Division of Procurement Services, Office of State Engineer Version (Combined AIA and OSE form).
2. AIA Document A101-2007 Standard Form of Agreement between Owner and Contractor - South Carolina Division of Procurement Services, Office of State Engineer Version (Combined AIA and OSE form).
3. AIA Document A201-2007 General Conditions of the Contract for Construction- South Carolina Division of Procurement Services, Office of State Engineer Version (Combined AIA and OSE form).
4. SE-210 - Invitation for Professional Services
5. SE-211 - Selection Committee Report for Interview Selection
6. SE-212 - Notification of Selection for Interview
7. SE-214 - Professional Services Selection Committee - Confidentiality & Conflict of Interest Policy
8. SE-215 - Professional Services Selection Committee Member - A/E Evaluation
9. SE-217 - Professional Services Selection Committee Summary
10. SE-219 - Notification of Selection for Contract Negotiation
11. SE-220 - Request for Authority to Execute a Professional Services Contract
12. SE-230 - Transmittal of Small Professional Services Contract - *For Information Only*
13. SE-235 - Professional Services Incidental Services Contract
14. SE-240 - South Carolina Small Professional Services Contract Terms and Conditions
15. SE-260 - Request for Authority to Amend a Professional Services Contract
16. SE-271 - Design Documents Transmittal Form - Design-Bid-Build
17. SE-290 - Professional Service Performance Evaluation
18. SE-295 - Assessment of Damages - Professional Service Contracts
19. SE-310 - Invitation for Design-Bid-Build Construction Services
20. SE-330 - Lump Sum Bid Form
21. SE-331 - Quote Form
22. SE-332 - Unit Price Bid Form
23. SE-350 - Questionnaire for Contractors
24. SE-355 - Performance Bond
25. SE-357 - Labor & Material Payment Bond
26. SE-360 - Request for Concurrence in Posting Notice of Intent to Award
27. SE-370 - Notice of Intent to Award
28. SE-380 - Change Order to Construction Contract
29. SE-390 - Notice to Proceed - Construction Contract
30. SE-395 - Assessment of Contract Liquidated Damages
31. SE-397 - Construction Contractor Performance Evaluation
32. SE-510 - Permit to Develop in a Flood Hazard Area (*only required when developing in a flood hazard area*)
33. SE-550 - Certificate of Substantial Completion
34. SE-560 - Certificate of Final Completion
35. SE-580 - Building/Construction Permit
36. SE-585 - Certificate of Occupancy/Use

# GUIDE FOR ORGANIZING AND COMPLETING THE PROJECT MANUAL

## **Design-Bid-Build Projects**

This guide describes the requirements for organizing and completing the OSE-required Front-End documents for the typical construction project exceeding \$50,000. The Project Manual should include the following in the order shown:

### **A. Table of Contents**

1. Use the OSE formatted Table of Contents found in Appendix B.2. Complete all of the fillable sections.
2. Follow the instructions in *italics* to incorporate the technical specifications.

### **B. SE-310 – Invitation for Design-Bid-Build Construction Services**

1. All sections of the SE-310, pages 1 & 2, must be completed with appropriate wording and boxes checked.
2. Submit a separate copy of pages 1 and 2 with the Construction Documents submittal. Page 1 must be submitted to OSE in MS Word format. A signed copy will be returned to the A/E and Agency by email for inclusion in the final bid documents.
3. DO NOT include page 2 in the project manual – even for review purposes.
4. The SE-310 included in the bidding documents must bear the OSE project manager’s signature, unless the project is within the Agency’s construction contract award certification.
5. SE-310, Page 1
  - a. Fill in the Agency/Owner complete name. Only “South Carolina” can be abbreviated to “SC”.
  - b. Fill in the complete Project Name and Number as determined in Chapter 1.
  - c. Fill in the Project Location, e.g., city or county.
  - d. Give a Description of the scope and requirements for the Project, including Bid Alternates and any requirements that significantly affect the scope of work or the qualifications of the bidders or sub-bidders. This section is limited to 500 characters, so be concise but complete.
  - e. Fill in the Bid Due Date.
  - f. Fill in the Construction Cost Range. This should be reasonable based on the cost estimate for this project.
  - g. The Project Delivery Method – Design-Bid-Build – has already been filled in. If this is not your method, you need to use another for the invitation.
  - h. Indicate the requirements for Bid Security: Bid Security is required for all competitive sealed bidding for construction contracts in excess of \$50,000.
  - i. Indicate the requirements for Performance Bond and Labor and Material Payment Bond to be provided if a contract is awarded. Performance Bond and a Labor and Material Payment Bond are required on all construction projects when the estimated cost for construction is \$50,000 or greater.
  - j. Indicate where bidding documents may be obtained, and the amount of deposit, if required.  
**NOTE:** The amount of the Plan Deposit should approximate the actual cost of printing. Any deposit over \$50 shall be refundable to all those returning the bidding documents, including subcontractors and suppliers, in good condition within 10 days after the bid opening. This needs to be stated in the project manual. If plans are only distributed electronically, no Plan Deposit should be charged.
  - k. Fill in the complete Name, Contact Name, Address, Email and Telephone Number of the A/E. If the project was designed in-house, fill in the agency’s information.
  - l. Fill in the complete Name, Address, Email and Telephone Number of the Agency and the Agency Coordinator. The Agency Coordinator should be the person designated by the Agency to respond to questions and to provide information regarding this project.
  - m. Indicate requirements for a Pre-Bid Conference by checking the appropriate boxes. Fill in Date, Time and exact Location. A Mandatory Pre-Bid Conference requires the Agency to provide a written determination that mandatory attendance is justified because of the unique nature of the project, and that it will not unduly restrict competition.  
**NOTE:** OSE recommends a minimum of 14 calendar days from the date of beginning advertisement in SCBO to the date of any Pre-Bid Conference.

- n. Fill in the Bid Closing Date, Time and Place and the Bid Delivery Addresses for Hand and Mail delivery of bids. The “Mail Service” address must include the street address.

**NOTE:** OSE recommends a minimum of 14 days from the date of any type of Pre-Bid Conference to the Bid Closing Date. When there is no Pre-Bid Conference, the OSE recommends a minimum of 21 days from the date of beginning advertisement in SCBO to the Bid Closing Date.

- o. Indicate if the project is estimated to be within Agency Construction Certification by checking the appropriate box.

**6. SE-310, Page 2**

- a. Fill in the Project Name and Number the same as shown on page 1 of the SE-310.
- b. Item #1, Budget: Fill in all Information requested.
  - (1) The Total Approved Project Funding is the total amount shown on the most recently approved A-1 form, or, for a Non-PIP, the budget established by the Agency for this project. This total must include the Construction Budget and any soft costs associated with this project.
  - (2) The Construction Budget for this Contract is an amount that represents the available funds allocated by the Agency for this construction contract, including contingencies.
  - (3) The Final Estimated Construction Cost cannot be greater than the Construction Budget for this Contract. This is the A-E’s final estimate of the bid award amount, including all Bid Alternates, as approved by the Agency.
- c. Item #2, Project Data: Provide the requested information. Fill in “N/A” if not applicable to this project.
- d. Item #3, Submittal to Local Authorities: This is a requirement of OSE to support the construction inspection requirements; therefore, an explanation must be given if the submittal was not made. Include the name and contact information of the local authorities, whether or not a submittal was made. Local Authority includes the local Fire Official.
- e. Item #4, Flood Hazard: Fill in ALL Flood Hazard information. This is required regardless of whether or not the project is in a flood hazard area.
- f. Item #5, Status of Permits and Approvals Required Prior to Bid Advertisement: Fill in all information for the project. Copies of all permits **MUST** be submitted to OSE prior to bid advertisement.
- g. Item #6, Green Construction: Fill in information as to whether this project is required to be LEED Silver or 2 Green Globes.
- h. The Agency’s Project Coordinator shall sign and date Page 2 of the form SE-310. Include the Coordinator’s title.

**C. AIA Document A310 – Bid Bond**

The Agency may elect to omit an original document at its discretion, provided a replacement page is inserted with information stating that the Bid Bond must be in the form of the AIA Document A310.

**D. AIA A701-1997 Instructions to Bidders - South Carolina Division of Procurement Services, Office of State Engineer Version**

This document is available only through AIA. The Agency may no longer elect to omit an original document at its discretion, since all the variable information completed in it is known at time of solicitation for bids, and it is beneficial to the bidders have easy access to these portions of the contract documents. This document may be found at the AIA “Document on Demand” (DOD) website, <https://documentsondemand.aia.org/?filter=SCOSE>. Fill this document out completely on the DoD website and purchase it from AIA. Insert it in the project manual where shown in the Table of Contents.

- 1. Page 1: Fill in the State Project Name and Number with Location and the Agency (Owner) and A/E Name and Location.
- 2. Page 11, Section 9.4: Fill in the location of the posting of the Notice of Intent to Award (SE-370), as determined by the Agency.
- 3. Page 12, Section 9.7 (should be 9.9): Fill in with only Other Special Conditions for this Work, such as listings of Agency’s specific campus requirements, Federal Funding requirements, special documents required, if any, for the project etc. OSE must approve any special conditions prior to advertisement. If there are no special conditions, fill in “NONE”. Upon request, OSE will provide suggested wording to be included for projects involving hazardous materials.

**E. SE-330 - Lump Sum Bid Form**

1. Page BF-1
  - a. BID SUBMITTED BY: No action by A/E or Agency - to be completed by Bidder.
  - b. BID SUBMITTED TO: Fill in the complete Agency name.
  - c. FOR PROJECT: Fill in the complete Project Name and Number.
  - d. Section 2, BID SECURITY: No action by A/E or Agency - appropriate box to be checked by Bidder.
  - e. Section 3, ADDENDA: No action by A/E or Agency - to be completed by Bidder.
  - f. Section 4: The period of time for acceptance of bid is set at 60 days. If there is a desire to change this time period on the bid form, contact OSE.
  - g. Section 6.1, BASE BID WORK: Insert the Base Bid work description as it appears in the Description of Project on the project SE-310. Omit any references to Bid Alternates and contractor qualifications.
2. Page BF-1A (*Delete this page if there are no Bid Alternates or Unit Prices requested.*)
  - a. Section 6.2, BID ALTERNATES: Insert a description of each Alternate in sufficient detail to indicate whether it is an add-to or deduct-from the Base Bid. Bidders will check the box in front of "ADD TO" or "DEDUCT FROM".
  - b. Section 6.3, UNIT PRICES: List only those items (with unit of measure) that most likely will be needed for Change Orders during the construction of the project. The Bidder should furnish requested unit prices.
3. Page BF-2, Section 7, Listing of Proposed Subcontractors
  - a. BASE BID: The Agency, in consultation with the A/E, shall identify, by license classification, all licensed subcontractors who are expected to perform work or render service to the prime contractor and whose subcontracts to the contractor are each expected to exceed 3% of the prime contractor's Base Bid.
 

**NOTE:** A subcontractor classification shall not be listed if the work of that specialty is a sub classification included within the scope of the prime contractor's license. Refer to the provisions of SC Code §40-11-410, for information.

    - (1) "Subcontractor" is as defined in the SE-330. Material suppliers, manufacturers and fabricators are not subcontractors and are not to be listed.
    - (2) In the event the Agency and A/E determine that no subcontractor listing is required on BF-2, the words "NO SUBCONTRACTOR LISTING REQUIRED" shall be included on this page below Subcontractor Classification column. In this case, delete Page BF-2A of the SE-330.
    - (3) The Agency may list other subcontractor classifications, regardless of the expected value of their work, but only if the Agency determines that the work of that subcontractor is vital to the success of the project. OSE strongly discourages this practice.
  - b. ALTERNATES: Fill in subcontractor classifications for Alternates only if the work of the alternate subcontractor classification is estimated to be more than 3% of the prime contractor's Base Bid.
  - c. The determination of which Subcontractor Classifications are listed in the Bid Form is not protestable by prospective bidders.
4. Page BF-3
  - a. Section 9, TIME OF CONTRACT PERFORMANCE AND LIQUIDATED DAMAGES
    - (1) CONTRACT TIME: Fill in number of calendar days allowed for construction. The Agency, in consultation with the A/E, shall determine the time allowed to reach Substantial Completion for the work.
    - (2) LIQUIDATED DAMAGES: Fill in the dollar amount to be retained for each calendar day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted time for Substantial Completion as provided in the contract documents. Typical items to be considered for setting the amount of Liquidated Damages are those costs or expenses that the Agency would incur if the Agency is unable to have unimpeded occupancy or use of the project in the specified or adjusted contract time. Some examples of these are:
      - (a) Additional costs for agency personnel working on the project;
      - (b) For asbestos abatement projects, the cost of additional air monitoring paid by the Agency;
      - (c) For dormitory projects, rental and/or other costs incurred for temporary housing for students, or for loss of student generated revenue because students could not be accepted;
      - (d) Agency costs for displacement of departments or other agency functions delayed from occupying the facility, or other justified inconvenience to the Agency;

- (e) Additional interest or other monetary expense charged against Agency funding; and
- (f) Additional costs to the Agency generated by the A-E during the extended time, such as personnel directly involved with the project.

b. Section 11, ELECTRONIC BID BOND: No action by A/E or Agency - to be completed by the Bidder.

5. Page BF-4: No action required by A/E or Agency - to be completed by the Bidder.

**F. AIA Document A101-2007 Standard Form of Agreement between Owner and Contractor - South Carolina Division of Procurement Services, Office of State Engineer Version**

This document is available only through AIA. Because this document must be completed before purchasing from AIA, the Agency should omit the original document and provided a replacement page inserted stating the following: “The Form of the Contract shall be the SCOSE Version of the AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, which is incorporated herein by reference. Samples of these documents may be viewed in Appendix J.2 of the OSE Manual, found at <https://procurement.sc.gov/manual>.”

When you are ready to purchase the form (after bidding), complete it as follows:

1. Page 1: Fill in the Agency (Owner) Name and Location, Contractor Name and Location, State Project Name and Number and short description and A/E Name and Location.
2. Page 2, Section 3.3: Fill in the number of days for completion of the project (same as shown on the SE-330 unless modified by agreement between Owner and Contractor after bid.) Include the amount to be charges for Liquidated Damages.
3. Page 3, Section 4.1: Fill in the contract amount. This should be same as on the Contractor’s Bid Form unless the amount was allowed to be negotiated down. In such case, provide an explanation.
4. Page 3, Section 4.2: List alternates that were accepted by the owner and included in the total contract price. List each alternate separately with the price bid for that alternate.
5. Page 3, Section 4.3: List any unit prices agreed to by the Owner and Contractor. These do not have to be the same as those listed, if any, on page BF-1A of the SE-330.
6. Page 3, Section 4.4: List any allowances that were included in the contract documents.
7. Page 5, Section 8.3: Fill in the Name and Contact information for the Owner’s Senior Representative and Representative.
8. Page 6, Section 8.4: Fill in the Name and Contact information for the Contractor’s Senior Representative and Representative.
9. Page 6, Section 8.6: Fill in the Name and Contact information for the A/E Representative.
10. Page 6, Section 9.1.3: List any additional Agency-created Supplementary Conditions that have been approved by OSE.
11. Page 7, Section 9.1.4: List the Specification sections here or reference an attachment of the Project Manual Table of Contents.
12. Page 7, Section 9.1.5: List all of the Drawings here or reference an attachment of the Drawing List.
13. Page 7, Section 9.1.6: Fill in all information for each Addendum, if any.

**G. AIA Document A201-2007 General Conditions of the Contract for Construction- South Carolina Division of Procurement Services, Office of State Engineer Version**

This document is available only through the AIA DoD website. Since all the variable information completed in it is known at time of solicitation for bids, and it is beneficial to the bidders have easy access to these portions of the contract documents, the Agency may not elect to omit the original document at its discretion. Fill this document in completely on the DoD website, purchase it from AIA and insert it in the project manual where shown in the Table of Contents.

1. Page 1: Fill in the State Project Name and Number with Location and the Agency (Owner) and A/E Name and Location.
2. Page 16, Section 3.10.3: Check the box if the Agency wants a more detailed schedule as described.
3. Page 35, Section 11.1.2: The insurance requirements listed here are the minimum required by the State. The Agency should assess the risks on each project and determine if these limits should be higher. If so, they should create a modification as an attachment and reference it in Section 16.7.
4. Page 47, Section 16.1: Indicate which inspection services are required for the Project. Inspection requirements are discussed in detail in Chapter 7, paragraph 7.6 of the OSE Manual.
  - a. At the A-E’s discretion, typical inspection requirements may be inserted in Section 01400 “Quality Assurance” of the technical specifications.



- b. If this approach is taken, insert in Section 16.1 after “Remarks” a statement referring the bidder to section 01400 for typical inspection requirements.
  - c. If any inspections are required, after “Remarks”, write “All inspections provided by owner.” If no inspections are required for the project, after “Remarks”, write “No inspections required.”
5. Pages 47 & 48, Articles 16.2 through 16.6: Fill in these sections with specific project-appropriate information. Make sure the information is coordinated with the applicable sections of the project manual, and reference the Section number in each of these articles. If an Article is not applicable, enter “NONE”.
6. Page 48, Section 16.7:
- a. Additional Agency-created Supplementary Conditions may be used with the prior approval of the OSE. If used, list them in this section.
  - b. Upon request, OSE will provide suggested wording to be included for projects involving hazardous materials.

**H. SE-355 – Performance Bond**

- 1. Fill in the Agency Name and Address.
- 2. Fill in State Project Name and Number and Brief Description of Work.
- 3. Fill in A/E Name and Address.

**I. SE-357 – Labor & Material Payment Bond**

- 1. Fill in the Agency Name and Address.
- 2. Fill in State Project Name and Number and Brief Description of Work.
- 3. Fill in A/E Name and Address.

**J. SE-380 – Change Order to Construction Contract**

- 1. Fill in the Agency Name.
- 2. Fill in the Project Name and Number.

**K. Technical Specifications**

- 1. Insert all technical specifications into the project manual that are listed in the Table of Contents. Coordinate the names and number of each section with what is listed in the Table of Contents.
- 2. Include in Section 01400 “Quality Assurance” with all requirements for special inspections, including a Statement of Special Inspections.

## PRE-BID CONFERENCE DISCUSSION ITEMS

<b>DISCUSSION ITEMS</b>	
<b><u>GENERAL</u></b>	<ol style="list-style-type: none"> <li>1. Only the written word as contained in the Bid Documents, including any addenda that may be issued, is binding.</li> <li>2. It is the bidders' responsibility to read and review all of the Bid Documents, including addenda.</li> <li>3. Statements made by the A/E, agency and/or the OSE representative are for the sole purpose of calling the bidders' attention to items of importance in the Bid Documents.</li> <li>4. All questions or requests for clarification must be submitted in writing. All responses will be made in the form of addenda to the bid documents.</li> </ol>
<b><u>SE-310 - INVITATION FOR DESIGN-BID-BUILD CONSTRUCTION SERVICES</u></b>	<ol style="list-style-type: none"> <li>1. Each bid shall have Bid Security of not less than 5% of the Base Bid amount.</li> <li>2. The successful bidder shall provide a Performance Bond and a Labor and Material Payment Bond, each in the full amount of the contract price.</li> <li>3. Prime Bidders and all subcontractors shall be licensed in accordance with the requirements of the Contractors' Licensing Board.</li> <li>4. If pre-bid is mandatory, state that only those bidder represented are eligible to bid. They must sign in under the same name that will appear on the Bid Form.</li> <li>5. Review the time, date and location of the bid opening.</li> </ol>
<b><u>INSTRUCTIONS TO BIDDERS (AIA A701-SCOSE)</u></b>	<ol style="list-style-type: none"> <li>1. Section 3.3, Substitutions:             <ol style="list-style-type: none"> <li>a. Section 3.3.1: Materials and products listed in the Bid Documents establish a standard of required function, dimension, appearance and quality to be met by a proposed substitution. The words 'or equal' and 'or approved equal' shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition.</li> <li>b. Section 3.3.2: Requests for substitutions must be submitted to the A/E at least 10 days prior to the bid date. Proof of equality of substitutions is the responsibility of the proposer. The A/E's decision to approve or disapprove of the requested substitutions shall be final.</li> <li>c. Section 3.3.3: The A/E shall include in an addendum the approved substitutions</li> </ol> </li> <li>2. Section 3.4, Addenda             <ol style="list-style-type: none"> <li>a. Section 3.4.3: No addenda will be issued later than 120 hours prior to the date for receipt of bids, except addenda postponing the date of receipt of bids or withdrawing the invitation for bids.</li> <li>b. Section 3.4.4: It is the bidder's responsibility to determine, prior to submitting a bid, that all addenda issued have been received. If the pre-bid is mandatory, the bidders should verify that their firm's name has been included in an addendum.</li> </ol> </li> <li>3. Section 4.1.4: Bidder shall not qualify his bid.</li> <li>4. Section 4.3.1: Bids sent by mail or other special delivery service (UPS, FED-EX, etc.) should be labeled "Bid Enclosed". Bids shall be received at the address indicated prior to the time of the bid opening. Bids not received prior to the time of the bid opening shall be rejected as being nonresponsive.</li> <li>5. Section 5.2.2: List of reasons for which bids will be rejected. Bidders should use this as a check list prior to submitting bid.</li> </ol>

**SE-330****LUMP SUM BID  
FORM**

1. Page BF-1:
  - a. Item 2. Bidders shall indicate the form of the bid security.
  - b. Item 3. Bidders shall acknowledge all addenda.
  - c. Item 4. By submitting a bid, Bidders agree that the Base Bid price and the Bid Alternate(s) price(s) shall not be revoked or withdrawn for the number of calendar days indicated.
  - d. Item 6.1. Base Bid shall be shown in readable numbers only (no words).
2. Page BF-1A (*when included*)
  - a. Item 6.2. Bidders shall check the box in front of “ADD TO” or “DEDUCT FROM” so as to clearly indicate the price adjustment to the Base Bid for each Alternate. All requested Alternates must be bid in order for the bid to be considered responsive.
  - b. Item 6.3. The Bidder should furnish requested unit prices. The agency reserves the right to include or not to include the unit prices in the contract and to negotiate unit prices with the Bidder. Unit prices have no bearing on the contract award with this bid form and should not be read at the bid opening.
3. Page BF-2
  - a. Note at bottom of page: If a Bid Alternate is accepted, the Subcontractors listed for the Bid Alternate shall be used for the work of both the Alternate and the Base Bid.
4. Page BF-2A
  - a. Item 1: Section 7 of the Bid Form sets forth a list of subcontractor specialties for which bidder is required to identify by name the subcontractor(s) that the Bidder will use to perform the work of each listed specialty. Bidder must identify only the subcontractor(s) who will perform the work and no others.
  - b. Item 3: Bidder must only insert the names of subcontractors who are qualified to perform the work of the listed specialties as specified in the Bidding Documents and South Carolina Licensing Laws.
  - c. Item 4: If under the terms of the Bidding Documents, Bidder is qualified to perform the work of a specialty listed and Bidder does not intend to subcontract such work but to use Bidder’s own employees to perform such work, the Bidder must insert its own name in the space provided for that specialty.
  - d. Item 5.a.: If Bidder intends to use multiple subcontractors to perform the work of a single specialty listing, Bidder must insert the name of each subcontractor Bidder will use, preferably separating the name of each by the word “**and**”. If Bidder intends to use both his own employees to perform a part of the work of a single specialty listing and to use one or more subcontractors to perform the remaining work for that specialty listing, Bidder must insert its own name and the name of each subcontractor, preferably separating the name of each with the word “**and**”.
  - e. Item 6: If Bidder is awarded the contract, Bidder must, except with the approval of the owner for good cause shown, use the listed entities to perform the work for which they are listed.
  - f. Item 8: A Bidder’s failure to insert a name for each listed specialty subcontractor will render the Bid non-responsive.
5. Page BF-3:
  - a. Sections 9(a & b), Time of Contract Performance and Liquidated Damages: Indicate that the DATE OF COMMENCEMENT shall be established in the Notice to Proceed. Review the number of Calendar Days allowed for construction to reach Substantial Completion. Review the Liquidated Damages amounts to be applied for failure to reach Substantial Completion within the contract time limit.
  - b. Section 11: If Bidder provides an electronic Bid Bond, the Bidder must indicate the electronic bid bond number and provide the proper signature and title in the spaces provided.

<p><b><u>GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION- (A201-2007-SCOPE)</u></b></p>	<ol style="list-style-type: none"> <li>1. Section 3.7.1: Requirements for general contractors to obtain business and other licenses, but not building permits.</li> <li>2. Article 11, Insurance and Bonds: <ol style="list-style-type: none"> <li>a. Bidders should verify their ability to comply with all insurance and bonding requirements of the project prior to submittal of their bid.</li> <li>b. Subparagraph 11.1.2: Contractor’s aggregate limits of Liability Insurance shall apply in total to this contract only. This requirement shall be identified on the insurance certificate or by an attached policy amendment.</li> <li>c. Subparagraph 11.3.1, Property Insurance: Contractor is to provide Builders Risk Policy to cover interest of all parties.</li> </ol> </li> <li>3. Article 16: Review typical and special inspection requirements for the project. Include requirements for the contractor to notify the appropriate inspecting entity when the construction is ready for a particular inspection.</li> </ol>
<p><b><u>CONCLUSION</u></b></p>	<ol style="list-style-type: none"> <li>1. It is the intent of the agency to award a Contract for the lowest responsive bid submitted by a responsible bidder.</li> <li>2. Remind all attendees to sign the sign-in sheet and provide all requested information before leaving the pre-bid.</li> <li>3. Emphasize the following: <ol style="list-style-type: none"> <li>a. Late bids shall be rejected as non-responsive.</li> <li>b. Bids without proper bid security, when required, shall be rejected as non-responsive.</li> <li>c. Qualified bids shall be rejected as nonresponsive.</li> <li>d. Bid <b><u>ALL</u></b> alternates included on the bid form provided.</li> <li>e. List <b><u>ALL</u></b> subcontractors required to be listed on the bid form.</li> </ol> </li> <li>4. Open the pre-bid meeting for questions by bidders.</li> <li>5. The A/E will, if necessary, provide answers to questions and other clarifying information to bidders by addendum.</li> <li>6. All lines of communication during the bidding stage should be through the A/E.</li> </ol>

## PRE-CONSTRUCTION CONFERENCE DISCUSSION ITEMS

ITEM NO.	PRE-CONSTRUCTION CONFERENCE ITEM	USER COMMENTS
1.	Project organizational structure and chain of command;	
2.	Schedule of values, schedule of completion;	
3.	Schedule of progress meetings;	
4.	Project work schedule, normal working hours, normal work week;	
5.	Required notice for scheduling overtime, outages, interruptions;	
6.	Safety issues - general and special;	
7.	Temporary and permanent utilities;	
8.	Security, keys, fencing, site access, limited access to certain areas;	
9.	Project sign;	
10.	Designated parking areas, delivery areas;	
11.	Designated storage areas, bonded storage, security;	
12.	Designated toilets, break areas, vending areas, smoking areas;	
13.	Daily clean-up, trash removal, dumpster, trash areas;	
14.	Submittals, shop drawings, testing, reports, approval process;	
15.	Required permits, licenses, local inspections, testing;	
16.	Demolition items to be salvaged for agency, if any, notification, storage area;	
17.	Requirement to locate utilities prior to excavation;	
18.	Agency furnished equipment, rough-in, trim;	
19.	Application for Payment in the form of AIA G702, payment dates, payment for stored materials in bonded storage;	
20.	Prompt payments to contractors in 21 days, subcontractors 7 days thereafter;	
21.	Timely notification by the Contractor in writing to the A/E of any alleged agency-caused delay and the estimated cost of the delay;	
22.	Additional weather related time extensions monthly;	
23.	Change orders, change directives, clarifications;	
24.	Required inspections by A/E, agency, and inspectors (where applicable),	

ITEM NO.	PRE-CONSTRUCTION CONFERENCE ITEM	USER COMMENTS
25.	Use of OSE Inspection logs and maintaining logs & reports on site; Inspection report routing – direct distribution rather than by link	
26.	Substantial Completion inspection, and notification procedure	
27.	Substantial Completion certification by the A/E;	
28.	Occupancy – Full, Temporary or Partial;	
29.	Assessment of liquidated damages;	
30.	Required Operation and Maintenance Manuals (provide prior to Final Completion);	
31.	Instruction and training of maintenance personnel (provide prior to move-in/occupancy)	
32.	Warranties, manufacturer start-up, guarantees (provide prior to Final Completion)	
33.	Record drawings, as built drawings;	
34.	Final Completion inspection, punch list;	
35.	Retainage withheld; consent of surety company before release of retainage;	
36.	One-year inspection (A/E to inspect the facility 10 months after Substantial Completion).	

# SE-310 INVITATION FOR DESIGN-BID-BUILD CONSTRUCTION SERVICES

AGENCY/OWNER: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

DESCRIPTION OF PROJECT/SERVICES: \_\_\_\_\_

BID/SUBMITTAL DUE DATE: \_\_\_\_\_ CONSTRUCTION COST RANGE: \$ \_\_\_\_\_ to \$ \_\_\_\_\_ N/A

PROJECT DELIVERY METHOD: Design-Bid-Build

**BID SECURITY IS REQUIRED IN AN AMOUNT NOT LESS THAN 5% OF THE BASE BID.**

PERFORMANCE BOND REQUIRED? Yes  No  PAYMENT BOND REQUIRED? Yes  No

BIDDING DOCUMENTS/PLANS MAY BE OBTAINED FROM: \_\_\_\_\_

PLAN DEPOSIT AMOUNT: \$ \_\_\_\_\_ IS DEPOSIT REFUNDABLE Yes  No  N/A

Bidders must obtain Bidding Documents/Plans from the above listed source(s) to be listed as an official plan holder. Bidders that rely on copies obtained from any other source do so at their own risk. All written communications with official plan holders & bidders will be via email or website posting.

*All questions & correspondence concerning this Invitation shall be addressed to the A/E.*

A/E NAME: \_\_\_\_\_

A/E CONTACT: \_\_\_\_\_

EMAIL: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

AGENCY PROJECT COORDINATOR: \_\_\_\_\_

EMAIL: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

PRE-BID CONFERENCE: Yes  No  MANDATORY ATTENDANCE: Yes  No

PRE-BID DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

PRE-BID PLACE: \_\_\_\_\_

BID DUE DATE: See Top of Page TIME: \_\_\_\_\_

BID OPENING PLACE: \_\_\_\_\_

**BID DELIVERY ADDRESSES:**

**HAND-DELIVERY:**

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**MAIL SERVICE:**

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

IS PROJECT WITHIN AGENCY CONSTRUCTION CERTIFICATION? (*Agency MUST check one*) Yes  No

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

*(OSE Project Manager)*

**DO NOT INCLUDE THIS PAGE IN THE PROJECT MANUAL**

**SE-310**

**INVITATION FOR DESIGN-BID-BUILD CONSTRUCTION SERVICES**

**ENTIRE FORM MUST BE COMPLETED PRIOR TO ADVERTISING PROJECT FOR BIDS**

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

<b>1. <u>BUDGET</u></b>	<b>2. <u>PROJECT DATA</u></b>	<b>New</b>	<b>Renovated</b>
Total Approved Project Funding: \$ _____	Gross Square Footage: _____	_____	_____
Construction Budget for this Contract: \$ _____	Estimated Bldg. Cost: _____	_____	_____
Final Estimate of Construction Cost: \$ _____	Estimated Site Cost: _____	_____	_____

*(The Final Estimate of Construction Cost cannot be greater than the Agency's Construction Budget for this Project.)*

**3. SUBMITTAL TO LOCAL AUTHORITIES** *(See Chapter 5 of the Manual)*  
**Plans and Specifications Have Been Submitted to Local Authorities:** Yes  No   
**If No, Explain:** \_\_\_\_\_  
**Names and Contact Info for Local Authorities:** *(Provide phone and e-mail if available):* \_\_\_\_\_

**4. FLOOD HAZARD** *(Provide ALL of the following information for ALL projects, even if not in a flood hazard zone)*  
**Flood Map Information:** Flood Zone: \_\_\_\_\_ *(A Floodplain Permit is required for A and V Zones)*  
 Community Number: \_\_\_\_\_ Panel Number: \_\_\_\_\_  
**Is the Project Site in a 100-Year Flood Plain?** Yes  No

**5. STATUS OF PERMITS AND APPROVALS REQUIRED PRIOR TO BID ADVERTISEMENT**  
*(Copies of all Permits and Approvals MUST be attached prior to advertisement.)*  
**FLOODPLAIN** *(OSE approval required, not subject to certification):* \_\_\_\_\_  
**DHEC** *(List Individual Permits and/or Approvals):* \_\_\_\_\_  
**Status of Each Permit/Approval:** \_\_\_\_\_  
**SCDOT:** \_\_\_\_\_  
**Status of Each Permit/Approval:** \_\_\_\_\_  
**ZONING** *(Include Name of Local Authority):* \_\_\_\_\_  
**Status of Permit/Approval:** \_\_\_\_\_  
**OTHER** *(List Separately):* \_\_\_\_\_  
**Status of Each Permit/Approval:** \_\_\_\_\_

**6. GREEN CONSTRUCTION**  
**Is project required to be certified as LEED or Green Globes per the Energy Efficiency Act of 2007?** Yes  No   
**If Yes, what certification is being pursued?** LEED Silver  2 Green Globes

**7. EROSION AND SEDIMENT CONTROL**  
**All Land Disturbing Activity associated with this project shall be performed pursuant to the Contract Documents.**

**AGENCY CERTIFICATION:**

**I hereby certify that all of the information on this SE-310 is true and accurate and that the Agency has authorized, unencumbered funds available for obligation to a contract for the project to be advertised. I hereby request the Office of State Engineer to advertise the above-named Project.**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Agency Project Coordinator)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Submit a copy of Pages 1 & 2 of the completed SE-310 to the OSE Project Manager in MS Word format.
2. If a Pre-Bid Conference is Mandatory, attach the Determination required by Reg. 19-445.2042(c).
3. Attach a copy of all permits and approvals listed in Section 5 of Page 2.
4. OSE Project Manager will review and send approved copy of Page 1 to SCBO and the Agency.
5. The signed copy of Page 1 MUST be included in the Bid Documents.



**SE-330  
LUMP SUM BID FORM**

*Bidders shall submit bids on only Bid Form SE-330.*

**BID SUBMITTED BY:** \_\_\_\_\_  
*(Bidder's Name)*

**BID SUBMITTED TO:** \_\_\_\_\_  
*(Owner's Name)*

**FOR: PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**OFFER**

§ 1. In response to the Invitation for Construction Services and in compliance with the Instructions to Bidders for the above-named Project, the undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with the Owner on the terms included in the Bidding Documents, and to perform all Work as specified or indicated in the Bidding Documents, for the prices and within the time frames indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

§ 2. Pursuant to SC Code § 11-35-3030(1), Bidder has submitted Bid Security as follows in the amount and form required by the Bidding Documents:

- Bid Bond with Power of Attorney**
- Electronic Bid Bond**
- Cashier's Check**

*(Bidder check one)*

§ 3. Bidder acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into this Bid:

*(Bidder, check all that apply. Note, there may be more boxes than actual addenda. Do not check boxes that do not apply)*

- ADDENDA:**             #1             #2             #3             #4             #5

§ 4. Bidder accepts all terms and conditions of the Invitation for Bids, including, without limitation, those dealing with the disposition of Bid Security. Bidder agrees that this Bid, including all Bid Alternates, if any, may not be revoked or withdrawn after the opening of bids, and shall remain open for acceptance for a period of **60** Days following the Bid Date, or for such longer period of time that Bidder may agree to in writing upon request of the Owner.

§ 5. Bidder herewith offers to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fees, permits, licenses and applicable taxes necessary to complete the following items of construction work:

§ 6.1 **BASE BID WORK** *(as indicated in the Bidding Documents and generally described as follows):* \_\_\_\_\_

**\$** \_\_\_\_\_, which sum is hereafter called the Base Bid.

*(Bidder to insert Base Bid Amount on line above)*

**SE-330**  
**LUMP SUM BID FORM**

§ 6.2 **BID ALTERNATES** as indicated in the Bidding Documents and generally described as follows:

**ALTERNATE # 1** (Brief Description): \_\_\_\_\_

**ADD TO** or  **DEDUCT FROM BASE BID: \$** \_\_\_\_\_

(Bidder to mark appropriate box to clearly indicate the price adjustment offered for each Alternate)

**ALTERNATE # 2** (Brief Description): \_\_\_\_\_

**ADD TO** or  **DEDUCT FROM BASE BID: \$** \_\_\_\_\_

(Bidder to mark appropriate box to clearly indicate the price adjustment offered for each Alternate)

**ALTERNATE # 3** (Brief Description): \_\_\_\_\_

**ADD TO** or  **DEDUCT FROM BASE BID: \$** \_\_\_\_\_

(Bidder to mark appropriate box to clearly indicate the price adjustment offered for each Alternate)

§ 6.3 **UNIT PRICES:**

**BIDDER** offers for the Agency’s consideration and use, the following **UNIT PRICES**. The **UNIT PRICES** offered by **BIDDER** indicate the amount to be added to or deducted from the **CONTRACT SUM** for each item-unit combination. **UNIT PRICES** include all costs to the Agency, including those for materials, labor, equipment, tools of trades and labor, fees, taxes, insurance, bonding, overhead, profit, etc. The Agency reserves the right to include or not to include any of the following **UNIT PRICES** in the Contract and to negotiate the **UNIT PRICES** with **BIDDER**.

<b>No.</b>	<b>ITEM</b>	<b>UNIT OF MEASURE</b>	<b>ADD</b>	<b>DEDUCT</b>
<u>1.</u>	_____	_____	\$ _____	\$ _____
<u>2.</u>	_____	_____	\$ _____	\$ _____
<u>3.</u>	_____	_____	\$ _____	\$ _____
<u>4.</u>	_____	_____	\$ _____	\$ _____
<u>5.</u>	_____	_____	\$ _____	\$ _____
<u>6.</u>	_____	_____	\$ _____	\$ _____

**SE-330**  
**LUMP SUM BID FORM**

**§ 7. LISTING OF PROPOSED SUBCONTRACTORS PURSUANT TO SECTION 3020(b)(i), CHAPTER 35, TITLE 11 OF THE SOUTH CAROLINA CODE OF LAWS, AS AMENDED**  
*(See Instructions on the following page BF-2A)*

Bidder shall use the below-listed Subcontractors in the performance of the Subcontractor Specialty Classification work listed:

<b>(A)</b> <b>SUBCONTRACTOR SPECIALTY</b> <i>(Completed by Owner)</i>	<b>(B)</b> <b>CLASSIFICATION or SUBCLASSIFICATION ABBREVIATION</b> <i>(Completed by Owner)</i>	<b>(C)</b> <b>SUBCONTRACTOR'S or PRIME CONTRACTOR'S NAME</b> <i>(Required - must be completed by Bidder)</i>	<b>(D)</b> <b>SUBCONTRACTOR'S or PRIME CONTRACTOR'S SC LICENSE NUMBER</b> <i>(Requested, but not Required)</i>
<b>BASE BID</b>			
<b>ALTERNATE #1</b>			
<b>ALTERNATE #2</b>			
<b>ALTERNATE #3</b>			

If a Bid Alternate is accepted, Subcontractors listed for the Bid Alternate shall be used for the work of both the Alternate and the Base Bid work.

# SE-330 LUMP SUM BID FORM

## INSTRUCTIONS FOR SUBCONTRACTOR LISTING

1. Section 7 of the Bid Form sets forth an Owner-developed list of contractor/subcontractor specialties by contractor license classification or subclassification for which Bidder is required to identify the entity (subcontractor(s) and/or himself) Bidder will use to perform the work of each listed specialty.
  - a. **Columns A & B:** The Owner fills out these columns to identify the contractor/subcontractor specialty and related license abbreviation for which the Bidder must list either a subcontractor or himself as the entity that will perform this work. In Column A, the subcontractor specialty is identified by name and in Column B, the related contractor license abbreviation (per Title 40 of the SC Code of Laws) is listed. Abbreviations of licenses can be found at: <http://www.llr.state.sc.us/POL/Contractors/PDFFiles/CLBClassificationAbbreviations.pdf> . If the owner has not identified a specialty, the Bidder does not list a subcontractor.
  - b. **Columns C and D:** In these columns, the Bidder identifies the subcontractors it will use for the work of each specialty and license listed by the Owner in columns A & B. Bidder must identify only the subcontractor(s) who will perform the work and no others. Bidders should make sure that their identification of each subcontractor is clear and unambiguous. A listing that could be any number of different entities may be cause for rejection of the bid as non-responsive. For example, a listing of M&M without additional information may be problematic if there are multiple different licensed contractors in South Carolina whose names start with M&M.
2. **Subcontractor Defined:** For purposes of subcontractor listing, a subcontractor is an entity who will perform work or render service to the prime contractor to or about the construction site pursuant to a contract with the prime contractor. Bidder should not identify sub-subcontractors in the spaces provided on the bid form but only those entities with which Bidder will contract directly. Likewise, do not identify material suppliers, manufacturers, and fabricators that will not perform physical work at the site of the project but will only supply materials or equipment to the Bidder or proposed subcontractor(s).
3. **Subcontractor Qualifications:** Bidder must only list subcontractors who possess a South Carolina contractor's license that includes the license classification and/or subclassification identified by the Owner in columns A & B. The subcontractor license must also be within the appropriate license group for the work of the specialty. If Bidder lists a subcontractor who is not qualified to perform the work, the Bidder will be rejected as non-responsive.
4. **Use of Own forces:** If, under the terms of the Bidding Documents and SC Contractor Licensing laws, Bidder is qualified to perform the work of a listed specialty and Bidder does not intend to subcontract such work but to use Bidder's own employees to perform such work, the Bidder must insert its own name in the space provided for that specialty.
5. **Use of Multiple Subcontractors:**
  - a. If Bidder intends to use multiple subcontractors to perform the work of a single specialty listing, Bidder must insert the name of each subcontractor Bidder will use, preferably separating the name of each by the word **"and"**. If Bidder intends to use both his own employees to perform a part of the work of a single specialty listing and to use one or more subcontractors to perform the remaining work for that specialty listing, Bidder must insert his own name and the name of each subcontractor, preferably separating the name of each with the word **"and"**. Bidder must use each entity listed for the work of a single specialty listing in the performance of that work.
  - b. **Optional Listing Prohibited:** Bidder may not list multiple subcontractors for a specialty listing, in a form that provides the Bidder the option, after bid opening or award, to choose one or more but not all the listed subcontractors to perform the work for which they are listed. A listing, which on its face requires subsequent explanation to determine whether it is an optional listing, is non-responsive. If Bidder intends to use multiple entities to perform the work for a single specialty listing, Bidder must clearly set forth on the bid form such intent. Bidder may accomplish this by simply inserting the word **"and"** between the names of each entity listed for that specialty. Agency will reject as non-responsive a listing that contains the names of multiple subcontractors separated by a blank space, the word **"or"**, a virgule (that is a /), or any separator that the Agency may reasonably interpret as an optional listing.
6. If Bidder is awarded the contract, Bidder must, except with the approval of the Agency for good cause shown, use the listed entities to perform the work for which they are listed.
7. If Bidder is awarded the contract, Bidder will not be allowed to substitute another entity as subcontractor in place of a subcontractor listed in Section 7 of the Bid except for one or more of the reasons allowed by the SC Code of Laws.
8. Bidder's failure to identify an entity (subcontractor or himself) to perform the work of a subcontractor specialty listed in columns A & B will render the Bid non-responsive.

## SE-330 LUMP SUM BID FORM

### § 8. LIST OF MANUFACTURERS, MATERIAL SUPPLIERS, AND SUBCONTRACTORS OTHER THAN SUBCONTRACTORS LISTED IN SECTION 7 ABOVE (*FOR INFORMATION ONLY*):

Pursuant to instructions in the Invitation for Construction Services, if any, Bidder will provide to Owner upon the Owner's request and within 24 hours of such request, a listing of manufacturers, material suppliers, and subcontractors, other than those listed in Section 7 above, that Bidder intends to use on the project. Bidder acknowledges and agrees that this list is provided for purposes of determining responsibility and not pursuant to the subcontractor listing requirements of SC Code § 11-35-3020(b)(i).

### § 9. TIME OF CONTRACT PERFORMANCE AND LIQUIDATED DAMAGES

#### a) CONTRACT TIME

Bidder agrees that the Date of Commencement of the Work shall be established in a Notice to Proceed to be issued by the Owner. Bidder agrees to substantially complete the Work within \_\_\_\_\_ Calendar Days from the Date of Commencement, subject to adjustments as provided in the Contract Documents.

#### b) LIQUIDATED DAMAGES

Bidder further agrees that from the compensation to be paid, the Owner shall retain as Liquidated Damages the amount of \$\_\_\_\_\_ for each Calendar Day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted time for Substantial Completion as provided in the Contract Documents. This amount is intended by the parties as the predetermined measure of compensation for actual damages, not as a penalty for nonperformance.

### § 10. AGREEMENTS

- a) Bidder agrees that this bid is subject to the requirements of the laws of the State of South Carolina.
- b) Bidder agrees that at any time prior to the issuance of the Notice to Proceed for this Project, this Project may be canceled for the convenience of, and without cost to, the State.
- c) Bidder agrees that neither the State of South Carolina nor any of its agencies, employees or agents shall be responsible for any bid preparation costs, or any costs or charges of any type, should all bids be rejected or the Project canceled for any reason prior to the issuance of the Notice to Proceed.

### § 11. ELECTRONIC BID BOND

By signing below, the Principal is affirming that the identified electronic bid bond has been executed and that the Principal and Surety are firmly bound unto the State of South Carolina under the terms and conditions of the AIA Document A310, Bid Bond, included in the Bidding Documents.

**ELECTRONIC BID BOND NUMBER:** \_\_\_\_\_

**SIGNATURE AND TITLE:** \_\_\_\_\_

**SE-330  
LUMP SUM BID FORM**

**CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATION**

**SC Contractor's License Number(s):** \_\_\_\_\_

**Classification(s) & Limits:** \_\_\_\_\_

**Subclassification(s) & Limits:** \_\_\_\_\_

**By signing this Bid, the person signing reaffirms all representation and certification made by both the person signing and the Bidder, including without limitation, those appearing in Article 2 of the SCOSE Version of the AIA A701, Instructions to Bidders, is expressly incorporated by reference.**

**BIDDER'S LEGAL NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**SE-330  
LUMP SUM BID FORM**

*Bidders shall submit bids on only Bid Form SE-330.*

**BID SUBMITTED BY:** \_\_\_\_\_  
*(Bidder's Name)*

**BID SUBMITTED TO:** \_\_\_\_\_  
*(Owner's Name)*

**FOR: PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**OFFER**

§ 1. In response to the Invitation for Construction Services and in compliance with the Instructions to Bidders for the above-named Project, the undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with the Owner on the terms included in the Bidding Documents, and to perform all Work as specified or indicated in the Bidding Documents, for the prices and within the time frames indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

§ 2. Pursuant to SC Code § 11-35-3030(1), Bidder has submitted Bid Security as follows in the amount and form required by the Bidding Documents:

- Bid Bond with Power of Attorney**
- Electronic Bid Bond**
- Cashier's Check**

*(Bidder check one)*

§ 3. Bidder acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into this Bid:

*(Bidder, check all that apply. Note, there may be more boxes than actual addenda. Do not check boxes that do not apply)*

- ADDENDA:**             #1             #2             #3             #4             #5

§ 4. Bidder accepts all terms and conditions of the Invitation for Bids, including, without limitation, those dealing with the disposition of Bid Security. Bidder agrees that this Bid, including all Bid Alternates, if any, may not be revoked or withdrawn after the opening of bids, and shall remain open for acceptance for a period of **60** Days following the Bid Date, or for such longer period of time that Bidder may agree to in writing upon request of the Owner.

§ 5. Bidder herewith offers to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fees, permits, licenses and applicable taxes necessary to complete the following items of construction work:

§ 6.1 **BASE BID WORK** *(as indicated in the Bidding Documents and generally described as follows):* \_\_\_\_\_

**\$** \_\_\_\_\_, which sum is hereafter called the Base Bid.

*(Bidder to insert Base Bid Amount on line above)*

**SE-330**  
**LUMP SUM BID FORM**

**§ 7. LISTING OF PROPOSED SUBCONTRACTORS PURSUANT TO SECTION 3020(b)(i), CHAPTER 35, TITLE 11 OF THE SOUTH CAROLINA CODE OF LAWS, AS AMENDED**  
*(See Instructions on the following page BF-2A)*

Bidder shall use the below-listed Subcontractors in the performance of the Subcontractor Specialty Classification work listed:

<b>(A)</b> <b>SUBCONTRACTOR SPECIALTY</b> <i>(Completed by Owner)</i>	<b>(B)</b> <b>CLASSIFICATION or SUBCLASSIFICATION ABBREVIATION</b> <i>(Completed by Owner)</i>	<b>(C)</b> <b>SUBCONTRACTOR'S or PRIME CONTRACTOR'S NAME</b> <i>(Required - must be completed by Bidder)</i>	<b>(D)</b> <b>SUBCONTRACTOR'S or PRIME CONTRACTOR'S SC LICENSE NUMBER</b> <i>(Requested, but not Required)</i>
<b>BASE BID</b>			
<b>ALTERNATE #1</b>			
<b>ALTERNATE #2</b>			
<b>ALTERNATE #3</b>			

If a Bid Alternate is accepted, Subcontractors listed for the Bid Alternate shall be used for the work of both the Alternate and the Base Bid work.



# SE-330 LUMP SUM BID FORM

## INSTRUCTIONS FOR SUBCONTRACTOR LISTING

1. Section 7 of the Bid Form sets forth an Owner-developed list of contractor/subcontractor specialties by contractor license classification or subclassification for which Bidder is required to identify the entity (subcontractor(s) and/or himself) Bidder will use to perform the work of each listed specialty.
  - a. **Columns A & B:** The Owner fills out these columns to identify the contractor/subcontractor specialty and related license abbreviation for which the Bidder must list either a subcontractor or himself as the entity that will perform this work. In Column A, the subcontractor specialty is identified by name and in Column B, the related contractor license abbreviation (per Title 40 of the SC Code of Laws) is listed. Abbreviations of licenses can be found at: <http://www.llr.state.sc.us/POL/Contractors/PDFFiles/CLBClassificationAbbreviations.pdf> . If the owner has not identified a specialty, the Bidder does not list a subcontractor.
  - b. **Columns C and D:** In these columns, the Bidder identifies the subcontractors it will use for the work of each specialty and license listed by the Owner in columns A & B. Bidder must identify only the subcontractor(s) who will perform the work and no others. Bidders should make sure that their identification of each subcontractor is clear and unambiguous. A listing that could be any number of different entities may be cause for rejection of the bid as non-responsive. For example, a listing of M&M without additional information may be problematic if there are multiple different licensed contractors in South Carolina whose names start with M&M.
2. **Subcontractor Defined:** For purposes of subcontractor listing, a subcontractor is an entity who will perform work or render service to the prime contractor to or about the construction site pursuant to a contract with the prime contractor. Bidder should not identify sub-subcontractors in the spaces provided on the bid form but only those entities with which Bidder will contract directly. Likewise, do not identify material suppliers, manufacturers, and fabricators that will not perform physical work at the site of the project but will only supply materials or equipment to the Bidder or proposed subcontractor(s).
3. **Subcontractor Qualifications:** Bidder must only list subcontractors who possess a South Carolina contractor's license that includes the license classification and/or subclassification identified by the Owner in columns A & B. The subcontractor license must also be within the appropriate license group for the work of the specialty. If Bidder lists a subcontractor who is not qualified to perform the work, the Bidder will be rejected as non-responsive.
4. **Use of Own forces:** If, under the terms of the Bidding Documents and SC Contractor Licensing laws, Bidder is qualified to perform the work of a listed specialty and Bidder does not intend to subcontract such work but to use Bidder's own employees to perform such work, the Bidder must insert its own name in the space provided for that specialty.
5. **Use of Multiple Subcontractors:**
  - a. If Bidder intends to use multiple subcontractors to perform the work of a single specialty listing, Bidder must insert the name of each subcontractor Bidder will use, preferably separating the name of each by the word **"and"**. If Bidder intends to use both his own employees to perform a part of the work of a single specialty listing and to use one or more subcontractors to perform the remaining work for that specialty listing, Bidder must insert his own name and the name of each subcontractor, preferably separating the name of each with the word **"and"**. Bidder must use each entity listed for the work of a single specialty listing in the performance of that work.
  - b. **Optional Listing Prohibited:** Bidder may not list multiple subcontractors for a specialty listing, in a form that provides the Bidder the option, after bid opening or award, to choose one or more but not all the listed subcontractors to perform the work for which they are listed. A listing, which on its face requires subsequent explanation to determine whether it is an optional listing, is non-responsive. If Bidder intends to use multiple entities to perform the work for a single specialty listing, Bidder must clearly set forth on the bid form such intent. Bidder may accomplish this by simply inserting the word **"and"** between the names of each entity listed for that specialty. Agency will reject as non-responsive a listing that contains the names of multiple subcontractors separated by a blank space, the word **"or"**, a virgule (that is a /), or any separator that the Agency may reasonably interpret as an optional listing.
6. If Bidder is awarded the contract, Bidder must, except with the approval of the Agency for good cause shown, use the listed entities to perform the work for which they are listed.
7. If Bidder is awarded the contract, Bidder will not be allowed to substitute another entity as subcontractor in place of a subcontractor listed in Section 7 of the Bid except for one or more of the reasons allowed by the SC Code of Laws.
8. Bidder's failure to identify an entity (subcontractor or himself) to perform the work of a subcontractor specialty listed in columns A & B will render the Bid non-responsive.

## SE-330 LUMP SUM BID FORM

### § 8. LIST OF MANUFACTURERS, MATERIAL SUPPLIERS, AND SUBCONTRACTORS OTHER THAN SUBCONTRACTORS LISTED IN SECTION 7 ABOVE (*FOR INFORMATION ONLY*):

Pursuant to instructions in the Invitation for Construction Services, if any, Bidder will provide to Owner upon the Owner's request and within 24 hours of such request, a listing of manufacturers, material suppliers, and subcontractors, other than those listed in Section 7 above, that Bidder intends to use on the project. Bidder acknowledges and agrees that this list is provided for purposes of determining responsibility and not pursuant to the subcontractor listing requirements of SC Code § 11-35-3020(b)(i).

### § 9. TIME OF CONTRACT PERFORMANCE AND LIQUIDATED DAMAGES

#### a) CONTRACT TIME

Bidder agrees that the Date of Commencement of the Work shall be established in a Notice to Proceed to be issued by the Owner. Bidder agrees to substantially complete the Work within \_\_\_\_\_ Calendar Days from the Date of Commencement, subject to adjustments as provided in the Contract Documents.

#### b) LIQUIDATED DAMAGES

Bidder further agrees that from the compensation to be paid, the Owner shall retain as Liquidated Damages the amount of \$\_\_\_\_\_ for each Calendar Day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted time for Substantial Completion as provided in the Contract Documents. This amount is intended by the parties as the predetermined measure of compensation for actual damages, not as a penalty for nonperformance.

### § 10. AGREEMENTS

- a) Bidder agrees that this bid is subject to the requirements of the laws of the State of South Carolina.
- b) Bidder agrees that at any time prior to the issuance of the Notice to Proceed for this Project, this Project may be canceled for the convenience of, and without cost to, the State.
- c) Bidder agrees that neither the State of South Carolina nor any of its agencies, employees or agents shall be responsible for any bid preparation costs, or any costs or charges of any type, should all bids be rejected or the Project canceled for any reason prior to the issuance of the Notice to Proceed.

### § 11. ELECTRONIC BID BOND

By signing below, the Principal is affirming that the identified electronic bid bond has been executed and that the Principal and Surety are firmly bound unto the State of South Carolina under the terms and conditions of the AIA Document A310, Bid Bond, included in the Bidding Documents.

**ELECTRONIC BID BOND NUMBER:** \_\_\_\_\_

**SIGNATURE AND TITLE:** \_\_\_\_\_

**SE-330  
LUMP SUM BID FORM**

**CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATION**

**SC Contractor's License Number(s):** \_\_\_\_\_

**Classification(s) & Limits:** \_\_\_\_\_

**Subclassification(s) & Limits:** \_\_\_\_\_

**By signing this Bid, the person signing reaffirms all representation and certification made by both the person signing and the Bidder, including without limitation, those appearing in Article 2 of the SCOSE Version of the AIA A701, Instructions to Bidders, is expressly incorporated by reference.**

**BIDDER'S LEGAL NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**SE-330  
LUMP SUM BID FORM**

*Bidders shall submit bids on only Bid Form SE-330.*

**BID SUBMITTED BY:** \_\_\_\_\_  
*(Bidder's Name)*

**BID SUBMITTED TO:** \_\_\_\_\_  
*(Owner's Name)*

**FOR: PROJECT NAME:** \_\_\_\_\_  
**PROJECT NUMBER:** \_\_\_\_\_

**OFFER**

§ 1. In response to the Invitation for Construction Services and in compliance with the Instructions to Bidders for the above-named Project, the undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with the Owner on the terms included in the Bidding Documents, and to perform all Work as specified or indicated in the Bidding Documents, for the prices and within the time frames indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

§ 2. Pursuant to SC Code § 11-35-3030(1), Bidder has submitted Bid Security as follows in the amount and form required by the Bidding Documents:

**Bid Bond with Power of Attorney**       **Electronic Bid Bond**       **Cashier's Check**  
*(Bidder check one)*

§ 3. Bidder acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into this Bid:

*(Bidder, check all that apply. Note, there may be more boxes than actual addenda. Do not check boxes that do not apply)*

**ADDENDA:**       #1       #2       #3       #4       #5

§ 4. Bidder accepts all terms and conditions of the Invitation for Bids, including, without limitation, those dealing with the disposition of Bid Security. Bidder agrees that this Bid, including all Bid Alternates, if any, may not be revoked or withdrawn after the opening of bids, and shall remain open for acceptance for a period of **60** Days following the Bid Date, or for such longer period of time that Bidder may agree to in writing upon request of the Owner.

§ 5. Bidder herewith offers to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fees, permits, licenses and applicable taxes necessary to complete the following items of construction work:

§ 6.1 **BASE BID WORK** *(as indicated in the Bidding Documents and generally described as follows):* \_\_\_\_\_

\$ \_\_\_\_\_, which sum is hereafter called the Base Bid.

*(Bidder to insert Base Bid Amount on line above)*

**SE-330**  
**LUMP SUM BID FORM**

§ 6.2 **BID ALTERNATES** as indicated in the Bidding Documents and generally described as follows:

**ALTERNATE # 1** (Brief Description): \_\_\_\_\_

**ADD TO** or  **DEDUCT FROM BASE BID: \$** \_\_\_\_\_

(Bidder to mark appropriate box to clearly indicate the price adjustment offered for each Alternate)

**ALTERNATE # 2** (Brief Description): \_\_\_\_\_

**ADD TO** or  **DEDUCT FROM BASE BID: \$** \_\_\_\_\_

(Bidder to mark appropriate box to clearly indicate the price adjustment offered for each Alternate)

**ALTERNATE # 3** (Brief Description): \_\_\_\_\_

**ADD TO** or  **DEDUCT FROM BASE BID: \$** \_\_\_\_\_

(Bidder to mark appropriate box to clearly indicate the price adjustment offered for each Alternate)

§ 6.3 **UNIT PRICES:**

**BIDDER** offers for the Agency’s consideration and use, the following **UNIT PRICES**. The **UNIT PRICES** offered by **BIDDER** indicate the amount to be added to or deducted from the **CONTRACT SUM** for each item-unit combination. **UNIT PRICES** include all costs to the Agency, including those for materials, labor, equipment, tools of trades and labor, fees, taxes, insurance, bonding, overhead, profit, etc. The Agency reserves the right to include or not to include any of the following **UNIT PRICES** in the Contract and to negotiate the **UNIT PRICES** with **BIDDER**.

<b>No.</b>	<b>ITEM</b>	<b>UNIT OF MEASURE</b>	<b>ADD</b>	<b>DEDUCT</b>
<u>1.</u>	_____	_____	\$ _____	\$ _____
<u>2.</u>	_____	_____	\$ _____	\$ _____
<u>3.</u>	_____	_____	\$ _____	\$ _____
<u>4.</u>	_____	_____	\$ _____	\$ _____
<u>5.</u>	_____	_____	\$ _____	\$ _____
<u>6.</u>	_____	_____	\$ _____	\$ _____

**SE-330**  
**LUMP SUM BID FORM**

**§ 7. LISTING OF PROPOSED SUBCONTRACTORS PURSUANT TO SECTION 3020(b)(i), CHAPTER 35, TITLE 11 OF THE SOUTH CAROLINA CODE OF LAWS, AS AMENDED**  
*(See Instructions on the following page BF-2A)*

Bidder shall use the below-listed Subcontractors in the performance of the Subcontractor Specialty Classification work listed:

<b>(A)</b> <b>SUBCONTRACTOR SPECIALTY</b> <i>(Completed by Owner)</i>	<b>(B)</b> <b>CLASSIFICATION or SUBCLASSIFICATION ABBREVIATION</b> <i>(Completed by Owner)</i>	<b>(C)</b> <b>SUBCONTRACTOR'S or PRIME CONTRACTOR'S NAME</b> <i>(Required - must be completed by Bidder)</i>	<b>(D)</b> <b>SUBCONTRACTOR'S or PRIME CONTRACTOR'S SC LICENSE NUMBER</b> <i>(Requested, but not Required)</i>
<b>BASE BID</b>			
<b>ALTERNATE #1</b>			
<b>ALTERNATE #2</b>			
<b>ALTERNATE #3</b>			

If a Bid Alternate is accepted, Subcontractors listed for the Bid Alternate shall be used for the work of both the Alternate and the Base Bid work.

## SE-330 LUMP SUM BID FORM

### § 8. LIST OF MANUFACTURERS, MATERIAL SUPPLIERS, AND SUBCONTRACTORS OTHER THAN SUBCONTRACTORS LISTED IN SECTION 7 ABOVE (*FOR INFORMATION ONLY*):

Pursuant to instructions in the Invitation for Construction Services, if any, Bidder will provide to Owner upon the Owner's request and within 24 hours of such request, a listing of manufacturers, material suppliers, and subcontractors, other than those listed in Section 7 above, that Bidder intends to use on the project. Bidder acknowledges and agrees that this list is provided for purposes of determining responsibility and not pursuant to the subcontractor listing requirements of SC Code § 11-35-3020(b)(i).

### § 9. TIME OF CONTRACT PERFORMANCE AND LIQUIDATED DAMAGES

#### a) CONTRACT TIME

Bidder agrees that the Date of Commencement of the Work shall be established in a Notice to Proceed to be issued by the Owner. Bidder agrees to substantially complete the Work within \_\_\_\_\_ Calendar Days from the Date of Commencement, subject to adjustments as provided in the Contract Documents.

#### b) LIQUIDATED DAMAGES

Bidder further agrees that from the compensation to be paid, the Owner shall retain as Liquidated Damages the amount of \$\_\_\_\_\_ for each Calendar Day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted time for Substantial Completion as provided in the Contract Documents. This amount is intended by the parties as the predetermined measure of compensation for actual damages, not as a penalty for nonperformance.

### § 10. AGREEMENTS

- a) Bidder agrees that this bid is subject to the requirements of the laws of the State of South Carolina.
- b) Bidder agrees that at any time prior to the issuance of the Notice to Proceed for this Project, this Project may be canceled for the convenience of, and without cost to, the State.
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By signing below, the Principal is affirming that the identified electronic bid bond has been executed and that the Principal and Surety are firmly bound unto the State of South Carolina under the terms and conditions of the AIA Document A310, Bid Bond, included in the Bidding Documents.

**ELECTRONIC BID BOND NUMBER:** \_\_\_\_\_

**SIGNATURE AND TITLE:** \_\_\_\_\_

**SE-330  
LUMP SUM BID FORM**

**CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATION**

**SC Contractor's License Number(s):** \_\_\_\_\_

**Classification(s) & Limits:** \_\_\_\_\_

**Subclassification(s) & Limits:** \_\_\_\_\_

**By signing this Bid, the person signing reaffirms all representation and certification made by both the person signing and the Bidder, including without limitation, those appearing in Article 2 of the SCOSE Version of the AIA A701, Instructions to Bidders, is expressly incorporated by reference.**

**BIDDER'S LEGAL NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_



**SE-330  
LUMP SUM BID FORM**

*Bidders shall submit bids on only Bid Form SE-330.*

**BID SUBMITTED BY:** \_\_\_\_\_  
*(Bidder's Name)*

**BID SUBMITTED TO:** \_\_\_\_\_  
*(Owner's Name)*

**FOR: PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**OFFER**

§ 1. In response to the Invitation for Construction Services and in compliance with the Instructions to Bidders for the above-named Project, the undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with the Owner on the terms included in the Bidding Documents, and to perform all Work as specified or indicated in the Bidding Documents, for the prices and within the time frames indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

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- ADDENDA:**             #1             #2             #3             #4             #5

§ 4. Bidder accepts all terms and conditions of the Invitation for Bids, including, without limitation, those dealing with the disposition of Bid Security. Bidder agrees that this Bid, including all Bid Alternates, if any, may not be revoked or withdrawn after the opening of bids, and shall remain open for acceptance for a period of **60** Days following the Bid Date, or for such longer period of time that Bidder may agree to in writing upon request of the Owner.

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**\$** \_\_\_\_\_, which sum is hereafter called the Base Bid.

*(Bidder to insert Base Bid Amount on line above)*

**SE-330**  
**LUMP SUM BID FORM**

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<b>BASE BID</b>			
<b>ALTERNATE #1</b>			
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## SE-330 LUMP SUM BID FORM

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- b) Bidder agrees that at any time prior to the issuance of the Notice to Proceed for this Project, this Project may be canceled for the convenience of, and without cost to, the State.
- c) Bidder agrees that neither the State of South Carolina nor any of its agencies, employees or agents shall be responsible for any bid preparation costs, or any costs or charges of any type, should all bids be rejected or the Project canceled for any reason prior to the issuance of the Notice to Proceed.

### § 11. ELECTRONIC BID BOND

By signing below, the Principal is affirming that the identified electronic bid bond has been executed and that the Principal and Surety are firmly bound unto the State of South Carolina under the terms and conditions of the AIA Document A310, Bid Bond, included in the Bidding Documents.

**ELECTRONIC BID BOND NUMBER:** \_\_\_\_\_

**SIGNATURE AND TITLE:** \_\_\_\_\_

**SE-330  
LUMP SUM BID FORM**

**CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATION**

**SC Contractor's License Number(s):** \_\_\_\_\_

**Classification(s) & Limits:** \_\_\_\_\_

**Subclassification(s) & Limits:** \_\_\_\_\_

**By signing this Bid, the person signing reaffirms all representation and certification made by both the person signing and the Bidder, including without limitation, those appearing in Article 2 of the SCOSE Version of the AIA A701, Instructions to Bidders, is expressly incorporated by reference.**

**BIDDER'S LEGAL NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

# SE-332 UNIT PRICE BID FORM

*Bidders shall submit bids on only Bid Form SE-332.*

**BID SUBMITTED BY:** \_\_\_\_\_  
(Bidder's Name)

**BID SUBMITTED TO:** \_\_\_\_\_  
(Owner's Name)

**FOR: PROJECT NAME:** \_\_\_\_\_  
**PROJECT NUMBER:** \_\_\_\_\_

## OFFER

§ 1. In response to the Invitation for Construction Services and in compliance with the Instructions to Bidders for the above-named Project, the undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with the Owner on the terms included in the Bidding Documents, and to perform all Work as specified or indicated in the Bidding Documents, for the prices and within the time frames indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

§ 2. Pursuant to SC Code § 11-35-3030(1), Bidder has submitted Bid Security as follows in the amount and form required by the Bidding Documents:

Bid Bond with Power of Attorney       Electronic Bid Bond       Cashier's Check

(Bidder check one)

§ 3. Bidder acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into this Bid: (Bidder, check only boxes that apply.)

**ADDENDA:**       #1       #2       #3       #4       #5

§ 4. Bidder accepts all terms and conditions of the Invitation for Bids, including, without limitation, those dealing with the disposition of Bid Security. Bidder agrees that this Bid, including the Unit Prices, may not be revoked or withdrawn after the opening of bids, and shall remain open for acceptance for a period of **60** Days following the Bid Date, or for such longer period of time that Bidder may agree to in writing upon request of the Owner.

§ 5. Bidder herewith offers to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fees, permits, licenses and applicable taxes necessary to complete the following items of construction work:

§ 6.1 **SCOPE OF WORK** (as indicated in the Bidding Documents and generally described as follows): \_\_\_\_\_

# SE-332 UNIT PRICE BID FORM

## § 6.2 UNIT PRICES

Bidder agrees to complete the Work in accordance with the Contract Documents for the following **UNIT PRICES**:

No.	ITEM	ESTIMATED BID QTY.	UNIT OF MEASURE	UNIT PRICE BID	EXTENDED VALUE <i>(Unit Price times Estimated Bid Qty.)</i>
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
<b>TOTAL BID</b> <i>(Total of all Extended Values)</i>					

**The lowest responsive and responsible bidder will be the responsive and responsible bidder submitting the lowest TOTAL BID price.**

Bidder acknowledges the following:

- 1) the estimated bid quantities are subject to increase or decrease depending on actual conditions encountered;
- 2) payment will be made on actual quantities at the Unit Prices stated herein; and
- 3) actual quantities will be determined upon completion of the work, at which time adjustment will be made to the contract amount by direct increase or decrease.

**SE-332  
UNIT PRICE BID FORM**

**§ 7. LISTING OF PROPOSED SUBCONTRACTORS PURSUANT TO SECTION 3020(b)(i), CHAPTER 35, TITLE 11 OF THE SOUTH CAROLINA CODE OF LAWS, AS AMENDED**  
(See Instructions below.)

SUBCONTRACTOR CLASSIFICATION (Completed by Owner)	LICENSE CLASSIFICATION AND/OR SUBCLASSIFICATION (Completed by Owner)	SUBCONTRACTOR'S and/or PRIME CONTRACTOR'S NAME (Must be completed by Bidder)	SUBCONTRACTOR'S and/or PRIME CONTRACTOR'S SC LICENSE NUMBER (Requested, but not Required)
<b>BASE BID</b>			

**INSTRUCTIONS FOR SUBCONTRACTOR LISTING**

1. Section 7 of the Bid Form sets forth an Owner developed list of contractor/subcontractor classifications by contractor license category and/or subcategory for which bidder is required to identify the entity (subcontractor(s) and/or himself) Bidder will use to perform the work of each listed classification.
  - a. **Columns A & B:** The Owner fills out these columns, which identify the contractor/subcontractor classification and related license for which the bidder must list either a subcontractor or himself as the entity that will perform this work. In Column A, subcontractor classifications are identified by name and in Column B, the related contractor license categories or subcategories are listed per with Title 40 of the South Carolina Code of laws. Abbreviations of licenses can be found at: <http://www.llr.state.sc.us/POL/Contractors/PDFFiles/CLBClassificationAbbreviations.pdf> . If the owner has not identified a classification, the bidder does not list a subcontractor.
  - b. **Columns C and D:** In these columns, the Bidder identifies the subcontractors it will use for the work of each classification and license listed by the Owner in Columns A & B. Bidder must identify only the subcontractor(s) who will perform the work and no others. Bidders should make sure that their identification of each subcontractor is clear and unambiguous. A listing that could be any number of different entities may be cause for rejection of the bid as non-responsive. For example, a listing of M&M without more may be problematic if there are multiple different licensed contractors in South Carolina whose names start with M&M.
2. **Subcontractor Defined:** For purposes of subcontractor listing, a subcontractor is an entity who will perform work or render service to the prime contractor to or about the construction site pursuant to a contract with the prime contractor. Bidder should not identify sub-subcontractors in the spaces provided on the bid form but only those entities with which bidder will contract directly. Likewise, do not identify material suppliers, manufacturers, and fabricators that will not perform physical work at the site of the project but will only supply materials or equipment to the bidder or proposed subcontractor(s).
3. **Subcontractor Qualifications:** Bidder must only list subcontractors who possess a South Carolina Contractor’s license with the license classification and/or subclassification identified by the Owner in the first column on the left. The subcontractor license must also be within the appropriate license group for the work of the specialty. If Bidder lists a subcontractor who is not qualified to perform the work, the Bidder will be rejected as non-responsive.
4. **Use of Own forces:** If under the terms of the Bidding Documents, Bidder is qualified to perform the work of a listed specialty and Bidder does not intend to subcontract such work but to use Bidder’s own employees to perform such work, the Bidder must insert its own name in the space provided for that specialty.
5. **Use of Multiple Subcontractors:**
  - a. If Bidder intends to use multiple subcontractors to perform the work of a single specialty listing, Bidder must insert the name of each subcontractor Bidder will use, preferably separating the name of each by the word **“and”**. If Bidder intends to use both his own employees to perform a part of the work of a single specialty listing and to use one or more subcontractors to perform the remaining work for that specialty listing, bidder must insert his own name and the name of each subcontractor, preferably separating the name of each with the word **“and”**. Bidder must use each entity listed for the work of a single specialty listing in the performance of that work.
  - b. **Optional Listing Prohibited:** Bidder may not list multiple subcontractors for a specialty listing, in a form that provides the Bidder the option, after bid opening or award, to choose to use one or more but not all the listed subcontractors to perform the work for which they are listed. A listing, which on its face requires subsequent explanation to determine whether it is an optional listing, is non-responsive. If bidder intends to use multiple entities to perform the work for a single specialty listing, bidder must clearly set forth on the bid form such intent. Bidder may accomplish this by simply inserting the word **“and”** between the names of each entity listed for that specialty. Agency will reject as non-responsive a listing that contains the names of multiple subcontractors separated by a blank space, the word **“or”**, a virgule (that is a /), or any separator that the Agency may reasonably interpret as an optional listing.
6. If Bidder is awarded the contract, bidder must, except with the approval of the Agency for good cause shown, use the listed entities to perform the work for which they are listed.
7. If bidder is awarded the contract, bidder will not be allowed to substitute another entity as subcontractor in place of a subcontractor listed in Section 7 of the Bid except for one or more of the reasons allowed by the SC Code of Laws.
8. Bidder’s failure to identify an entity (subcontractor or himself) to perform the work of a subcontractor specialty listed in the first column on the left will render the Bid non-responsive.

# SE-332

## UNIT PRICE BID FORM

### § 8. LIST OF MANUFACTURERS, MATERIAL SUPPLIERS, AND SUBCONTRACTORS OTHER THAN SUBCONTRACTORS LISTED IN SECTION 7 ABOVE (*FOR INFORMATION ONLY*):

Pursuant to instructions in the Invitation for Construction Services, if any, Bidder will provide to Owner upon the Owner's request and within 24 hours of such request, a listing of manufacturers, material suppliers, and subcontractors, other than those listed in Section 7 above, that Bidder intends to use on the project. Bidder acknowledges and agrees that this list is provided for purposes of determining responsibility and not pursuant to the subcontractor listing requirements of SC Code § 11-35-3020(b)(i).

### § 9. TIME OF CONTRACT PERFORMANCE AND LIQUIDATED DAMAGES

#### a) CONTRACT TIME

Bidder agrees that the Date of Commencement of the Work shall be established in a Notice to Proceed to be issued by the Owner. Bidder agrees to substantially complete the Work within \_\_\_\_\_ calendar days from the Date of Commencement, subject to adjustments as provided in the Contract Documents.

#### b) LIQUIDATED DAMAGES

Bidder further agrees that from the compensation to be paid, the Owner shall retain as Liquidated Damages the amount of \$\_\_\_\_\_ for each calendar day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted time for Substantial Completion as provided in the Contract Documents. This amount is intended by the parties as the predetermined measure of compensation for actual damages, not as a penalty for nonperformance.

### § 10. AGREEMENTS

- a) Bidder agrees that this bid is subject to the requirements of the laws of the State of South Carolina.
- b) Bidder agrees that at any time prior to the issuance of the Notice to Proceed for this Project, this Project may be canceled for the convenience of, and without cost to, the State.
- c) Bidder agrees that neither the State of South Carolina nor any of its agencies, employees or agents shall be responsible for any bid preparation costs, or any costs or charges of any type, should all bids be rejected or the Project canceled for any reason prior to the issuance of the Notice to Proceed.

### § 11. ELECTRONIC BID BOND

By signing below, the Principal is affirming that the identified electronic bid bond has been executed and that the Principal and Surety are firmly bound unto the State of South Carolina under the terms and conditions of the AIA Document A310, Bid Bond, included in the Bidding Documents.

**ELECTRONIC BID BOND NUMBER:** \_\_\_\_\_

**SIGNATURE AND TITLE:** \_\_\_\_\_



**SE-332  
UNIT PRICE BID FORM**

**CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATION**

**SC Contractor's License Number(s):** \_\_\_\_\_

**Classification(s) & Limits:** \_\_\_\_\_

**Subclassification(s) & Limits:** \_\_\_\_\_

**By signing this Bid, the person signing reaffirms all representation and certification made by both the person signing and the Bidder, including without limitation, those appearing in Article 2 of the SCOSE Version of the AIA A701, Instructions to Bidders, is expressly incorporated by reference.**

**BIDDER'S LEGAL NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

# SE-355 PERFORMANCE BOND

**KNOW ALL MEN BY THESE PRESENTS**, that *(Insert full name or legal title and address of Contractor)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

hereinafter referred to as "Contractor", and *(Insert full name and address of principal place of business of Surety)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

hereinafter called the "surety", are jointly and severally held and firmly bound unto *(Insert full name and address of Agency)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

hereinafter referred to as "Agency", or its successors or assigns, the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), being the sum of the Bond to which payment to be well and truly made, the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Contractor has by written agreement dated \_\_\_\_\_ entered into a contract with Agency to construct

State Project Name: \_\_\_\_\_  
State Project Number: \_\_\_\_\_  
Brief Description of Awarded Work: \_\_\_\_\_

in accordance with Drawings and Specifications prepared by *(Insert full name and address of A/E)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

which agreement is by reference made a part hereof, and is hereinafter referred to as the Contract.

**IN WITNESS WHEREOF**, Surety and Contractor, intending to be legally bound hereby, subject to the terms stated herein, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

**DATED this** \_\_\_\_\_ **day of** \_\_\_\_\_, **2** \_\_\_\_\_  
*(shall be no earlier than Date of Contract)*

**BOND NUMBER** \_\_\_\_\_

**CONTRACTOR**

**SURETY**

**By:** \_\_\_\_\_  
(Seal)

**By:** \_\_\_\_\_  
(Seal)

**Print Name:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Print Title:** \_\_\_\_\_

**Print Title:** \_\_\_\_\_  
*(Attach Power of Attorney)*

**Witness:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

*(Additional Signatures, if any, appear on attached page)*

**SE-355****PERFORMANCE BOND****NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:**

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Agency for the full and faithful performance of the contract, which is incorporated herein by reference.
2. If the Contractor performs the contract, the Surety and the Contractor have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.
3. The Surety's obligation under this Bond shall arise after:
  - 3.1 The Agency has notified the Contractor and the Surety at the address described in paragraph 10 below, that the Agency is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If the Agency, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the Agency's right, if any, subsequently to declare a Contractor Default; or
  - 3.2 The Agency has declared a Contractor Default and formally terminated the Contractor's right to complete the Contract.
4. The Surety shall, within 15 days after receipt of notice of the Agency's declaration of a Contractor Default, and at the Surety's sole expense, take one of the following actions:
  - 4.1 Arrange for the Contractor, with consent of the Agency, to perform and complete the Contract; or
  - 4.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
  - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Agency for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Agency and the contractor selected with the Agency's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the Agency the amount of damages as described in paragraph 7 in excess of the Balance of the Contract Sum incurred by the Agency resulting from the Contractor Default; or
  - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and:
    - 4.4.1 After investigation, determine the amount for which it may be liable to the Agency and, within 60 days of waiving its rights under this paragraph, tender payment thereof to the Agency; or
    - 4.4.2 Deny liability in whole or in part and notify the Agency, citing the reasons therefore.
5. Provided Surety has proceeded under paragraphs 4.1, 4.2, or 4.3, the Agency shall pay the Balance of the Contract Sum to either:
  - 5.1 Surety in accordance with the terms of the Contract; or
  - 5.2 Another contractor selected pursuant to paragraph 4.3 to perform the Contract.
  - 5.3 The balance of the Contract Sum due either the Surety or another contractor shall be reduced by the amount of damages as described in paragraph 7.
6. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond 15 days after receipt of written notice from the Agency to the Surety demanding that the Surety perform its obligations under this Bond, and the Agency shall be entitled to enforce any remedy available to the Agency.
  - 6.1 If the Surety proceeds as provided in paragraph 4.4 and the Agency refuses the payment tendered or the Surety has denied liability, in whole or in part, then without further notice the Agency shall be entitled to enforce any remedy available to the Agency.
  - 6.2 Any dispute, suit, action or proceeding arising out of or relating to this Bond shall be governed by the Dispute Resolution process defined in the Contract Documents and the laws of the State of South Carolina.
7. After the Agency has terminated the Contractor's right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Agency shall be those of the Contractor under the Contract, and the responsibilities of the Agency to the Surety shall be those of the Agency under the Contract. To a limit of the amount of this Bond, but subject to commitment by the Agency of the Balance of the Contract Sum to mitigation of costs and damages on the Contract, the Surety is obligated to the Agency without duplication for:
  - 7.1 The responsibilities of the Contractor for correction of defective Work and completion of the Contract; and
  - 7.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and
  - 7.3 Damages awarded pursuant to the Dispute Resolution Provisions of the Contract. Surety may join in any Dispute Resolution proceeding brought under the Contract and shall be bound by the results thereof; and
  - 7.4 Liquidated Damages, or if no Liquidated Damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. The Surety shall not be liable to the Agency or others for obligations of the Contractor that are unrelated to the Contract, and the Balance of the Contract Sum shall not be reduced or set-off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Agency or its heirs, executors, administrators, or successors.
9. The Surety hereby waives notice of any change, including changes of time, to the contract or to related subcontracts, purchase orders and other obligations.
10. Notice to the Surety, the Agency or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. Definitions
  - 11.1 Balance of the Contract Sum: The total amount payable by the Agency to the Contractor under the Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts to be received by the Agency in settlement of insurance or other Claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.
  - 11.2 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform the Contract or otherwise to comply with the terms of the Contract.

**SE-357**  
**LABOR & MATERIAL PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that *(Insert full name or legal title and address of Contractor)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

hereinafter referred to as “Contractor”, and *(Insert full name and address of principal place of business of Surety)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

hereinafter called the “surety”, are jointly and severally held and firmly bound unto *(Insert full name and address of Agency)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

hereinafter referred to as “Agency”, or its successors or assigns, the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), being the sum of the Bond to which payment to be well and truly made, the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Contractor has by written agreement dated \_\_\_\_\_ entered into a contract with Agency to construct

State Project Name: \_\_\_\_\_  
State Project Number: \_\_\_\_\_  
Brief Description of Awarded Work: \_\_\_\_\_

in accordance with Drawings and Specifications prepared by *(Insert full name and address of A/E)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

which agreement is by reference made a part hereof, and is hereinafter referred to as the Contract.

**IN WITNESS WHEREOF**, Surety and Contractor, intending to be legally bound hereby, subject to the terms stated herein, do each cause this Labor & Material Payment Bond to be duly executed on its behalf by its authorized officer, agent or representative.

**DATED this** \_\_\_\_\_ **day of** \_\_\_\_\_, **2** \_\_\_\_\_ **BOND NUMBER** \_\_\_\_\_  
*(shall be no earlier than Date of Contract)*

**CONTRACTOR**

**SURETY**

**By:** \_\_\_\_\_  
(Seal)

**By:** \_\_\_\_\_  
(Seal)

**Print Name:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Print Title:** \_\_\_\_\_

**Print Title:** \_\_\_\_\_  
*(Attach Power of Attorney)*

**Witness:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

*(Additional Signatures, if any, appear on attached page)*

**SE-357****LABOR & MATERIAL PAYMENT BOND****NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:**

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Agency to pay for all labor, materials and equipment required for use in the performance of the Contract, which is incorporated herein by reference.
  2. With respect to the Agency, this obligation shall be null and void if the Contractor:
    - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants; and
    - 2.2 Defends, indemnifies and holds harmless the Agency from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract.
  3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
  4. With respect to Claimants, and subject to the provisions of Title 29, Chapter 5 and the provisions of §11-35-3030(2)(c) of the SC Code of Laws, as amended, the Surety's obligation under this Bond shall arise as follows:
    - 4.1 Every person who has furnished labor, material or rental equipment to the Contractor or its subcontractors for the work specified in the Contract, and who has not been paid in full therefore before the expiration of a period of ninety (90) days after the date on which the last of the labor was done or performed by him or material or rental equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute such action for the sum or sums justly due him.
    - 4.2 A remote claimant shall have a right of action on the payment bond upon giving written notice by certified or registered mail to the Contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which such claim is made.
    - 4.3 Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or circuit in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material or rental equipment was supplied by the person bringing suit.
  5. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
    - 5.1 Send an answer to the Claimant, with a copy to the Agency, within sixty (60) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
    - 5.2 Pay or arrange for payment of any undisputed amounts.
    - 5.3 The Surety's failure to discharge its obligations under this paragraph 5 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a claim. However, if the Surety fails to discharge its obligations under this paragraph 5, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs to recover any sums found to be due and owing to the Claimant.
  6. Amounts owed by the Agency to the Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the Contractor furnishing and the Agency accepting this Bond, they agree that all funds earned by the contractor in the performance of the Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Agency's prior right to use the funds for the completion of the Work.
  7. The Surety shall not be liable to the Agency, Claimants or others for obligations of the Contractor that are unrelated to the Contract. The Agency shall not be liable for payment of any costs or expenses of any claimant under this bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
  8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.
  9. Notice to the Surety, the Agency or the Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the Agency or the contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
  10. By the Contractor furnishing and the Agency accepting this Bond, they agree that this Bond has been furnished to comply with the statutory requirements of the South Carolina Code of Laws, as amended, and further, that any provision in this Bond conflicting with said statutory requirements shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
  11. Upon request of any person or entity appearing to be a potential beneficiary of this bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
  12. Any dispute, suit, action or proceeding arising out of or relating to this Bond shall be governed by the laws of the State of South Carolina.
- 13. DEFINITIONS**
- 13.1 Claimant: An individual or entity having a direct contract with the Contractor or with a Subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the Contractor and the Contractor's Subcontractors, and all other items for which a mechanic's lien might otherwise be asserted.
  - 13.2 Remote Claimant: A person having a direct contractual relationship with a subcontractor of the Contractor or subcontractor, but no contractual relationship expressed or implied with the Contractor.
  - 13.3 Contract: The agreement between the Agency and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**SE-360****REQUEST FOR CONCURRENCE IN POSTING NOTICE OF INTENT TO AWARD****AGENCY:** \_\_\_\_\_**PROJECT NAME:** \_\_\_\_\_**PROJECT NUMBER:** \_\_\_\_\_

The above named Agency hereby requests approval from the Office of State Engineer (OSE) to post a Notice of Intent to Award a contract to the Contractor named and for the amount stated below. If the Agency does not receive written objection from OSE within 5 business days after OSE's receipt of this Request and the documentation required below, the Agency may post the attached Notice of Intent to Award at the location stated in the Instructions to Bidders.

**INTENDED AWARDEE (Contractor):** \_\_\_\_\_**AWARD AMOUNT: \$** \_\_\_\_\_**DATE BIDS WERE OPENED:** \_\_\_\_\_**AGENCY CERTIFICATION AND REQUEST**

I hereby certify that the Agency has conducted this solicitation in accordance with the requirements of the SC Consolidated Procurement Code and the *Manual for Planning and Execution of State Permanent Improvements, Part II* and that the proposed expenditure is within the authorized scope and budget for this Project. I further certify that the Agency has authorized, unencumbered funds available for obligation to this contract. I hereby request the approval of the Office of State Engineer to post a Notice of Intent to Award a contract for construction services in support of the above-named Project.

**AGENCY SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_**PRINT NAME:** \_\_\_\_\_**TITLE:** \_\_\_\_\_ **APPROVED****OSE PROJECT MANAGER:** \_\_\_\_\_**DATE:** \_\_\_\_\_ **NOT APPROVED****OSE PROJECT MANAGER:** \_\_\_\_\_**DATE:** \_\_\_\_\_**REASONS FOR DISAPPROVAL OF REQUEST:** \_\_\_\_\_**SUBMIT THE FOLLOWING DOCUMENTS TO OSE:**

1. SE-360.
2. Copy of the lowest responsive and responsible Bidder's Bid Form, including Bid Security with Power of Attorney.
3. If any other bidder submitted a lower bid, but was determined to be non-responsive or non-responsible, a copy of:
  - a. That bidder's Bid Form, and
  - b. A statement setting forth the basis for disqualifying that bidder.
4. Copy of Bid Tabulation.
5. Copy of proposed SE-370, Notice of Intent to Award.
6. Contractor licenses, if applicable, for the lowest responsive and responsible bidder and his listed subcontractors (*may be obtained from LLR's website at <https://verify.llronline.com/LicLookup/LookupMain.aspx>. Select the category "Contractors – Commercial" or, if applicable, "Burglar Alarm, Fire Alarm & Fire Sprinkler", and follow the instructions.*)
7. Copy of the project A/E's latest cost estimate for the work, if different from the estimate on Page 2 of the SE-310.

# SE-370 NOTICE OF INTENT TO AWARD

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**POSTING DATE:** \_\_\_\_\_

**TO ALL BIDDERS:**

Unless stayed by protest or canceled, the Agency intends to enter into a contract as noted below. The successful bid will be accepted and the contract formed by execution of the contract documents. All bid bonds remain in effect for the bid acceptance period as provided in Section 4 of the Bid Form, except as otherwise provided in the Instructions to Bidders.

**NAME OF BIDDER:** \_\_\_\_\_

**DATE BIDS WERE OPENED:** \_\_\_\_\_

**BID INFORMATION:**

**BASE BID AMOUNT:** \$ \_\_\_\_\_

**ALTERNATES:** #1 **ACCEPTED**  \$ \_\_\_\_\_

#2 **ACCEPTED**  \$ \_\_\_\_\_

#3 **ACCEPTED**  \$ \_\_\_\_\_

**TOTAL AWARD (BASE BID AND ACCEPTED ALTERNATE(S)):** \$ \_\_\_\_\_

**REMARKS** (*explain any negotiations that resulted in a change in any Bid amounts*): \_\_\_\_\_

Contractor should not incur any costs associated with the contract prior to receipt of a contract from the Agency for execution. Contractor should not perform any work prior to (1) delivering to the Agency both certificates of insurance and Performance and Payment Bonds meeting the requirements of the solicitation; and (2) receipt of the Agency’s written Notice to Proceed. The State assumes no liability for any expenses incurred by the Contractor prior to issuance of a Notice to Proceed, other than the Contractor’s non-reimbursable costs incurred in providing such bonds.

**RIGHT TO PROTEST (SC Code § 11-35-4210)**

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this contract may protest within ten (10) days of the date the Notice of Intent to Award is posted. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided.

**PROTEST - CPO ADDRESS - OSE:** Any protest must be addressed to the Chief Procurement Officer for Construction, Office of State Engineer, and submitted in writing (a) by email to: [protest-ose@mmo.sc.gov](mailto:protest-ose@mmo.sc.gov), (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the e-mail address from which you sent your protest.

\_\_\_\_\_  
(Agency Procurement Officer Signature)

\_\_\_\_\_  
(Print or Type Name)

**INSTRUCTIONS TO THE AGENCY:**

1. Post a copy of this form at the location specified by the Instructions to Bidders and announced at the Bid Opening.
2. Send a copy of this form and the final Bid Tabulation to all responsive Bidders and OSE.

**CHANGE ORDER WORKSHEET (OPTIONAL)**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_

			(1) Contractor	(2) Subcontractor	(3) TOTAL
<b>Direct Costs</b>	1.	Labor			
	2.	Materials (including Sales Tax)			
	3.	Rental Charges			
	4.	Subtotal Direct Costs (sum lines 1 – 3)	\$ 0.00	\$ 0.00	\$ 0.00
<b>Contractor Markup</b>	5.	Contractor OH&P (17% of line 4, col 1)	\$ 0.00		
	6.	Subcontractor's OH&P (17% of line 4, col 2)		\$ 0.00	
	7.	Contractor markup on Subcontractor (10% of line 4, col 2)	\$ 0.00		
	8.	Total Contractor Markup (sum lines 5 – 7)	\$ 0.00	\$ 0.00	\$ 0.00
<b>Additional Bonding, Insurance and Permit Costs Associated with Change Order</b>	9.	Bonds			
	10.	Insurance			
	11.	Permits, Licenses or Fees			
	12.	Subtotal (sum lines 9 – 11)	\$ 0.00	\$ 0.00	\$ 0.00
<b>TOTAL</b>	13.	Change Order Cost (sum lines 4, 8, 12, col 3)			\$ 0.00

**Instructions to the General Contractor**

1. Complete this form by providing the project information required above and the proposed Change Order Cost.
2. Provide detailed back-up verifying the numbers shown above, including hourly rates for labor and number of hours worked.
3. Contractor Markup percentages are per the AIA A201, Section 7.5.
4. Round all amounts to the nearest dollar.



SE-380

CHANGE ORDER NO.: \_\_\_\_\_

**CHANGE ORDER TO DESIGN-BID-BUILD CONSTRUCTION CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_ **CONTRACT DATE:** \_\_\_\_\_

This Contract is changed as follows: *(Insert description of change in space provided below)*

**ADJUSTMENTS IN THE CONTRACT SUM:**

1. Original Contract Sum:		\$
2. Change in Contract Sum by previously approved Change Orders:		
3. Contract Sum prior to this Change Order		\$ 0.00
4. Amount of this Change Order:		
5. New Contract Sum, including this Change Order:		\$ 0.00

**ADJUSTMENTS IN THE CONTRACT TIME:**

1. Original Substantial Completion Date:		
2. Sum of previously approved increases and decreases in Days:		Days
3. Change in Days for this Change Order		Days
4. New Substantial Completion Date:		

**CONTRACTOR ACCEPTANCE:**

**BY:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
*(Signature of Representative)*

**Print Name of Representative:** \_\_\_\_\_

**A/E RECOMMENDATION FOR ACCEPTANCE:**

**BY:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
*(Signature of Representative)*

**Print Name or Representative:** \_\_\_\_\_

**AGENCY ACCEPTANCE AND CERTIFICATION:**

**BY:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
*(Signature of Representative)*

**Print Name of Representative:** \_\_\_\_\_

Change is within Agency Construction Contract Change Order Certification of: \$ \_\_\_\_\_ Yes  No

**AUTHORIZED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(OSE Project Manager)*

**SUBMIT THE FOLLOWING TO OSE**

1. SE-380, fully completed and signed by the Contractor, A/E and Agency;
2. Detailed back-up information, with OH&P shown, from the Contractor/Subcontractor(s) that justifies the costs and schedule changes shown.
3. If any item exceeds Agency certification, OSE will authorize the SE-380 and return to Agency.

**SE-390**

**NOTICE TO PROCEED – CONSTRUCTION CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**TO:** \_\_\_\_\_

*(Contractor's Name)*

**NOTICE:** Your Contract for the subject Project has been executed by the Agency, and you are hereby given Notice To Proceed with the Work of the Project. A Pre-Construction meeting will be held on the date set below.

The Date of Commencement is fixed below and shall be used in determining the initial date for Substantial Completion and for assessing Liquidated Damages, if any, set forth in the contract documents.

Failure to commence actual physical work on this Project within Fourteen (14) Days from the Date of Commencement will entitle the Agency to consider you in material breach of this Contract. In this event, the Agency may withdraw this Notice to Proceed and terminate the Contract in accordance with the Contract Documents.

**DATE OF NOTICE TO PROCEED:** \_\_\_\_\_

**DATE OF COMMENCEMENT:** \_\_\_\_\_  
*(should be no less than 7 days after Date of Notice To Proceed)*

**INITIAL CONTRACT TIME:** \_\_\_\_\_ **days**

**INITIAL DATE FOR SUBSTANTIAL COMPLETION:** \_\_\_\_\_

**DATE OF PRE-CONSTRUCTION MEETING:** \_\_\_\_\_

**LIQUIDATED DAMAGES:**

Liquidated Damages will be assessed in the amount of \$ \_\_\_\_\_ per day in accordance with the Contract Documents.

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Agency Representative)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

Complete this form and send to the Contractor with a copy sent to OSE

**SE-395**

**ASSESSMENT OF CONTRACT LIQUIDATED DAMAGES**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

In accordance with the SCOSE Version of the AIA Document A101, Standard Form of Agreement Between Owner and Contractor, the Agency has assessed and is retaining Liquidated Damages in the amount shown below:

- 1. Date of Commencement:   
*(Per SE-390, Notice to Proceed)*
  
- 2. Number of Calendar Days of the Original Contract Time:   
*(Per A101 Contract)*
  
- 3. Date for Contract Substantial Completion:   
*(Per SE-390, Notice to Proceed)*
  
- 4. Number of Calendar Days Added by Approved Change Order(s):   
*(Per SE-380, Construction Change Order)*
  
- 5. Date of Revised Contract Substantial Completion:   
*(Per SE-380, Construction Change Order)*
  
- 6. Date of Actual Substantial Completion As Determined by the Architect:   
*(Per SE-550, Certificate of Substantial Completion)*
  
- 7. Total Number of Calendar Days Between Contract Substantial Completion Date and Actual Substantial Completion as Determined by the Architect:
  
- 8. Per Day Amount of Liquidated Damages to be Assessed: \$  
*(Per A101 Contract)*
  
- 9. **TOTAL DOLLAR AMOUNT OF LIQUIDATED DAMAGES ASSESSED:** **\$ 0.00**

_____ <i>(Architect/Engineer Firm)</i>	_____ <i>(Signature)</i>	_____ <i>(Date)</i>
_____ <i>(Contractor)</i>	_____ <i>(Signature)</i>	_____ <i>(Date)</i>
_____ <i>(Agency)</i>	_____ <i>(Signature)</i>	_____ <i>(Date)</i>

**ACKNOWLEDGED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(OSE Project Manager)*

**SUBMIT TO OSE**

- 1. SE-395

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**TECHNICAL SPECIFICATIONS**

# CLAUSES FOR USE IN CONSTRUCTION MANAGEMENT AT-RISK CONTRACTS

## MODIFICATIONS TO THE AIA A201-2007 (SCOSE EDITION)

1. *Delete the first sentence of the second paragraph in Section 1.1.1 and substitute the following:*

Any reference in this document to the Agreement between the Owner and Construction Manager, AIA document A133, or some abbreviated reference thereof, shall mean AIA Document A133-2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor, SCOSE Edition

2. *Delete Section 7.5.1 and substitute the following:*

**7.5.1** For any adjustment to each Subcontract Sum for which overhead and profit may be recovered, other than those made pursuant to Unit Prices stated in the Subcontract Documents, the Contractor agrees to charge and accept, as full payment for Subcontractor overhead and profit, the following percentages of costs attributable to the change in the Work. The percentages cited below shall be considered to include all indirect costs including, but not limited to: field and office managers, supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. The allowable percentages for overhead and profit are as follows:

**.1** To each Subcontractor for work performed by the Subcontractor's own forces, 17% of the subcontractor's actual costs.

**.2** To each Subcontractor for work performed by a sub-subcontractor, 10% of the sub-subcontractor's actual costs (not including the sub-subcontractor's overhead and profit).

**7.5.2** For any adjustment to the Contract Sum, the Construction Manager's Fee shall be as set forth in Section 5.1.1 of the Agreement Between Owner and Construction Manager as Constructor, AIA A133-2009 (SCOSE Edition).

3. *In Section 9.2.1, delete the first sentence and substitute the following sentence:*

The Contractor shall submit to the Architect, within ten days of the execution of Exhibit "A", a schedule of values allocating the GMP to the various portions of the work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require.



## CLAUSES FOR USE IN CONSTRUCTION MANAGEMENT AT-RISK RFP

1. Disclosure of Conflicts of Interest or Unfair Competitive Advantage : You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. Without limitation, an unfair competitive advantage exists where a contractor competing for award possesses either proprietary information that was obtained from a government official without proper authorization or source selection information (as defined in Regulation 19-445.2010(C)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered.
2. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION: GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.
  - a. By submitting an offer, the offeror certifies that—
    - 1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—
      - (a) Those prices;
      - (b) The intention to submit an offer; or
      - (c) The methods or factors used to calculate the prices offered.
    - 2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
    - 3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
  - b. Each signature on the offer is considered to be a certification by the signatory that the signatory—
    - 1) Is the person in the offeror's organization responsible for determining the prices being offered in this offer, and that the signatory has not participated and will not participate in any action contrary to paragraphs 1.A through 1.C of this certification; or
    - 2) (a) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs 1.a through 1.c of this certification [As used in this subdivision 2.b.i, the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid];
      - (b) As an authorized agent, does certify that the principals referenced in subdivision 2.b.i of this certification have not participated, and will not participate, in any action contrary to paragraphs 1.a through 1.c of this certification; and
      - (c) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs 1.a through 1.c of this certification.
  - c. If the offeror deletes or modifies paragraph 1.b of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.
3. CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS:
  - a. By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-
    - 1) Offeror and/or any of its Principals-
      - (a) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
      - (b) Have not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of bids; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
      - (c) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph 1.a.(i)(b) of this provision.

- 2) Offeror has not, within a three-year period preceding this bid, had one or more contracts terminated for default by any public (Federal, state, or local) entity.
- b. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).
  - c. Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
  - d. If Offeror is unable to certify the representations stated in paragraphs 1.a., Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.
  - e. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  - f. The certification in paragraph 1 of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.
4. **ETHICS CERTIFICATE:** By submitting a offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: SC Code § 8-13-700, regarding use of official position for financial gain; SC Code § 8-13-705, regarding gifts to influence action of public official; SC Code § 8-13-720, regarding offering money for advice or assistance of public official; SC Code §§ 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; SC Code § 8-13-790, regarding recovery of kickbacks; SC Code § 8-13-1150, regarding statements to be filed by consultants; and SC Code § 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by SC Code § 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed.
5. **RESTRICTIONS APPLICABLE TO OFFERORS & GIFTS:** Violation of these restrictions may result in disqualification of your bid, suspension or debarment, and may constitute a violation of the state Ethics Act.
- a. After issuance of the solicitation, ***offeror agrees not to discuss this procurement activity in any way with the Owner or its employees, agents or officials.*** All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed.
  - b. Unless otherwise approved in writing by the Procurement Officer, ***offeror agrees not to give anything to the Owner, any affiliated organizations, or the employees, agents or officials of either, prior to award.***
  - c. Offeror acknowledges that the policy of the State is that a governmental body should not accept or solicit a gift, directly or indirectly, from a donor if the governmental body has reason to believe the donor has or is seeking to obtain contractual or other business or financial relationships with the governmental body. SC Regulation 19-445.2165(C) broadly defines the term donor.
6. **NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING (IMPORTANT TAX NOTICE - NONRESIDENTS ONLY):**
- a. Withholding Requirements for Payments to Nonresidents: SC Code § 12-8-550 requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident.
  - b. The withholding requirement does not apply to:
    - 1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina,
    - 2) nonresidents who are not conducting business in South Carolina,
    - 3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or

- 4) payments to a nonresident who
  - (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and
  - (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.
- c. For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: [www.sctax.org](http://www.sctax.org).
- d. This notice is for informational purposes only. This Owner does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898- 5383.
- e. Please see the "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" form (Form Number I-312) located at: <http://www.sctax.org/forms/withholding/i-312-form>.

**7. SUBMITTING CONFIDENTIAL INFORMATION:**

- a. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either
  - 1) a trade secret as defined in SC Code § 30-4-40(a)(1), or
  - 2) privileged & confidential, as that phrase is used in SC Code § 11-35-410.
- b. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by SC Code § 39-8-20 of the Trade Secrets Act.
- c. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by SC Code § 11-35-1810.
- d. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire bid as confidential, trade secret, or protected! If your bid or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page.
- e. By submitting a response to this solicitation, Offeror
  - 1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, & documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED",
  - 2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and
  - 3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure.
- f. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED".
- g. By submitting a response, Offeror agrees to defend, indemnify & hold harmless the State of South Carolina, its officers & employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED".

- 8. SOLICITATION INFORMATION FROM SOURCES OTHER THAN OFFICIAL SOURCE:** South Carolina Business Opportunities (SCBO) is the official state government publication for State of South Carolina solicitations. Any information on State agency solicitations obtained from any other source is unofficial and any reliance placed on such information is at the offeror's sole risk and is without recourse under the South Carolina Consolidated Procurement Code.

9. **TAX CREDIT FOR SUBCONTRACTING WITH MINORITY FIRMS:** Pursuant to SC Code § 12-6-3350, taxpayers, who utilize certified minority subcontractors, may take a tax credit equal to 4% of the payments they make to said subcontractors. The payments claimed must be based on work performed directly for a South Carolina state contract. The credit is limited to a maximum of fifty thousand dollars annually. The taxpayer is eligible to claim the credit for 10 consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Taxpayers must maintain evidence of work performed for a State contract by the minority subcontractor. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. The subcontractor must be certified as to the criteria of a "Minority Firm" by the Governor's Office of Small and Minority Business Assistance (OSMBA). Certificates are issued to subcontractors upon successful completion of the certification process. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. Reference: SC Code § 11-35-5010 – Definition for Minority Subcontractor & SC Code § 11-35-5230 (B) – Regulations for Negotiating with State Minority Firms.
10. **CLARIFICATION (NOV 2007):** Pursuant to SC Code § 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [SC Code § 11-35-1520(8); SC Reg.19-445.2080]
11. **DISCUSSIONS & NEGOTIATIONS (NOV 2007):** Submit your best terms from a cost or price and from a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. If improper revisions are submitted, the State may elect to consider only your unrevised initial proposal. [SC Code § 11-35-1530(6); SC Reg 19-445.2095(I)] The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in SC Code § 11-35-1530(8). If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal.
12. **OPEN TRADE REPRESENTATION (JUN 2015):** By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

**SE-410****INVITATION FOR CONSTRUCTION MANAGEMENT AT RISK SERVICES**

AGENCY/OWNER: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

DESCRIPTION OF PROJECT/SERVICES: \_\_\_\_\_

BID/SUBMITTAL DUE DATE: \_\_\_\_\_ CONSTRUCTION COST RANGE: \$ \_\_\_\_\_ to \$ \_\_\_\_\_ N/A PROJECT DELIVERY METHOD: Construction Management at Risk (CM-R)

RFQ/RFP DOCUMENTS MAY BE OBTAINED FROM: \_\_\_\_\_

- Contractor will be required to provide Performance and Labor and Material Payment Bonds, each in the amount of 100% of the contract price.
- **PUBLIC NOTICES:** All notices (Notice of Meetings, SE-470, Notice of Intent to Award CM-R Contract) shall be posted at the following location: \_\_\_\_\_
- **LICENSURE:** To be considered for selection, persons or firms must be properly licensed in accordance with the requirements of Title 40 of the SC Code of Laws, as amended, at the time of resume submission.
- To submit confidential information, see <https://procurement.sc.gov/construction/ose-confidential>.
- In accordance with the South Carolina Green Purchasing Initiative, submittals cannot exceed \_\_\_\_\_ pages, front and back, including covers, which must be soft – no hard notebooks.
- All written communications with parties submitting information will be via email. Agency **WILL NOT** accept submittals via email.
- Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with this solicitation or the intended award or award of a contract under this solicitation may protest to the State Engineer in accordance with Section 11-35-4210 at: CPO, Office of State Engineer, 1201 Main Street, Suite 600, Columbia, SC 29201. EMAIL: [protest-ose@mno.sc.gov](mailto:protest-ose@mno.sc.gov)

A/E NAME: \_\_\_\_\_

A/E CONTACT: \_\_\_\_\_

EMAIL: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

AGENCY PROJECT COORDINATOR: \_\_\_\_\_ TITLE: \_\_\_\_\_

EMAIL: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

NON-MANDATORY PRE-SUBMITTAL CONFERENCE: Yes  No 

CONFERENCE DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

CONFERENCE PLACE: \_\_\_\_\_

SUBMITTAL DUE DATE: See Top of Page TIME: \_\_\_\_\_ NUMBER OF COPIES: \_\_\_\_\_

## SUBMITTAL DELIVERY ADDRESSES:

## HAND-DELIVERY:

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## MAIL SERVICE:

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

*(OSE Project Manager)***INSTRUCTIONS TO THE AGENCY:**

1. Submit a copy of the completed SE-410 to the OSE Project Manager in Word format.
2. OSE Project Manager will review and send approved copy to SCBO and the Agency.

**SE-411  
REGISTER OF RESPONDING FIRMS - CM-R**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**FIRMS RESPONDING TO THE INVITATION FOR CONSTRUCTION MANAGEMENT AT RISK SERVICES REQUEST FOR QUALIFICATIONS:**

<u>Firm Name</u>	<u>Date of modifications to Qualifications (if any)</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____
13. _____	_____
14. _____	_____
15. _____	_____
16. _____	_____
17. _____	_____
18. _____	_____
19. _____	_____
20. _____	_____

**AGENCY CERTIFICATION**

I certify that the above information is correct.

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Agency Project Manager)*

**PRINT NAME:** \_\_\_\_\_

**WITNESS:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Witness)*

**PRINT NAME:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Submit to OSE Project Manager for information.
2. File this form with the other procurement documents.

**SE-412**

**SELECTION COMMITTEE REPORT FOR RFQ PREQUALIFICATION - CM-R**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

The Agency Selection Committee met on \_\_\_\_\_ (date) to review RFQ submittals for this project. The Invitation for Construction Management at Risk Services (SE-410) for this project began advertising in South Carolina Business Opportunities (SCBO) beginning on: \_\_\_\_\_ (date).

The following firms were selected as the most qualified to participate in the RFP as determined by the Selection Committee for the listed reasons.

1. **FIRM PREQUALIFIED UNDER THE RFQ:** \_\_\_\_\_

**REASONS FOR THEIR PREQUALIFICATION:** \_\_\_\_\_

2. **FIRM PREQUALIFIED UNDER THE RFQ:** \_\_\_\_\_

**REASONS FOR THEIR PREQUALIFICATION:** \_\_\_\_\_

3. **FIRM PREQUALIFIED UNDER THE RFQ:** \_\_\_\_\_

**REASONS FOR THEIR PREQUALIFICATION:** \_\_\_\_\_

4. **FIRM PREQUALIFIED UNDER THE RFQ:** \_\_\_\_\_

**REASONS FOR THEIR PREQUALIFICATION:** \_\_\_\_\_

5. **FIRM PREQUALIFIED UNDER THE RFQ:** \_\_\_\_\_

**REASONS FOR THEIR PREQUALIFICATION:** \_\_\_\_\_

**SELECTION COMMITTEE CERTIFICATION**

I certify that the above information is correct.

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

*(Signature of Selection Committee Chair)*

**PRINT NAME:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Submit to OSE Project Manager with SE-413 for information.
2. File this form with the other procurement documents.

**SE-413  
NOTIFICATION OF PREQUALIFICATION – CM-R**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**TO PREQUALIFIED FIRMS RESPONDING TO THE INVITATION FOR CM-R SERVICES IN CONNECTION WITH THE ABOVE NAMED PROJECT:**

Notice is hereby given that the Agency Selection Committee has, in accordance with the requirements of SC Code §11-35-3023, the *Manual for Planning and Execution of State Permanent Improvement Projects, Part II*, and the solicitation documents, reviewed the qualifications of interested firms and determined the below listed firms to be qualified to present a proposal for this project:

**NAME OF FIRM:** \_\_\_\_\_

**NAME OF FIRM:** \_\_\_\_\_

**NAME OF FIRM:** \_\_\_\_\_

**NAME OF FIRM:** \_\_\_\_\_

**NAME OF FIRM:** \_\_\_\_\_

Only those firms listed above may attend the Pre-Proposal Conference.

**DATE OF PRE-PROPOSAL CONFERENCE:** \_\_\_\_\_ Mandatory

Non-Mandatory

**TIME:** \_\_\_\_\_ **LOCATION:** \_\_\_\_\_

**BY:** \_\_\_\_\_

*(Signature of Agency Project Manager or Designee)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Send a copy of this SE-413 to all of the Prequalified Firms who responded to the solicitation.
2. Send a copy of the SE-413 to OSE Project Manager.
3. Retain the original SE-413 in the Agency's procurement file.



# SE-414

## CM-R SELECTION COMMITTEE

### CONFIDENTIALITY AND CONFLICT OF INTEREST POLICY

AGENCY: \_\_\_\_\_  
 PROJECT NAME: \_\_\_\_\_  
 PROJECT NUMBER: \_\_\_\_\_

The Agency and Selection Committee acknowledges the importance of protecting the public's trust in State Procurement. It is, therefore, the policy of the Agency, and this Selection Committee to abide by all laws, regulations, and policies regarding the avoidance of conflict of interest and the preservation of confidentiality. In order to assure a fair selection process that potential and actual offerors and the public trust, the Selection Committee for this project adopts the following policy:

#### CONFIDENTIALITY OF INFORMATION

Prior to the issuance of an award or notification of intent to award, whichever is earlier, Selection Committee members shall not engage in conduct that:

1. Favors one offeror over another;
2. Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;
3. Reveals an offeror's price without that offeror's permission;
4. Reveals the names of individuals providing reference information about an offeror's past performance; or
5. Knowingly furnishes source selection information to anyone other than the responsible procurement officer. "Source selection information" means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (a) proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (b) source selection plans, (c) technical evaluation plans, (d) technical evaluations of proposals, (e) cost or price evaluations of proposals, (f) information regarding which proposals are determined to be reasonably susceptible of being selected for award, (g) rankings of responses, proposals, or competitors, (h) reports, evaluations of source selection panels or evaluation panels, (i) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

#### CONFIDENTIALITY OF INFORMATION CERTIFICATION

I fully understand the confidential nature of the procurement process, including the evaluation of proposals and the selection of potential contractors. By my signature below, I agree to:

1. Return all evaluation-related materials to the Agency Project Manager;
2. Refuse to discuss these materials or the evaluation proceedings with any individual not directly involved in the evaluation; and,
3. Refer all inquiries or contacts concerning any aspect of the procurement process to the Chair of the Selection Committee.

I understand that any actual or apparent conflict of interest or breach of confidentiality, however innocent, may result in my removal from the Selection Committee.

#### CONFLICT OF INTEREST CERTIFICATION

I have been selected to serve on the Selection Committee for the above project. By my signature below, I hereby certify:

1. To the best of my knowledge and belief, no conflict of interest exists that:
  - A. diminishes my capacity to impartially and objectively review the proposals submitted;
  - B. has the potential to result in a biased opinion or unfair advantage; or
  - C. prevents me from evaluating any proposal submitted solely on its merits and in accordance with the evaluation criteria.
2. To the best of my knowledge and belief, I have no apparent conflict of interest that, in the eyes of a reasonable person, may give the appearance of the possibility of partiality in the performance of my duties in this acquisition.
3. In determining whether any conflict of interest exists, I have considered all of the following factors that might place me in a position of conflict, actual or apparent, with the evaluation proceedings:
  - A. my relationship with any potential contractor, subcontractor or direct competitor of any potential contractor under consideration by the evaluation committee;
  - B. my stocks, bonds, and other financial interests or commitments;
  - C. my employment and business arrangements (past, present, and under consideration); and
  - D. to the extent known by me, the financial interests and employment and business arrangements of members of my immediate family.
4. I have a continuing obligation to disclose any circumstance that may create an actual or apparent conflict of interest. If I learn of any such conflict, I will report it immediately to the Procurement Officer. I will perform no more duties related to the evaluation of proposals until I receive instructions on the matter.
5. I have read and understand the requirements of the Ethics, Governmental Accountability, and Campaign Reform Act (State Ethics Act, Title 8, Chapter 13 of the SC Code of Laws. <http://www.scstatehouse.gov/code/title8.php>).

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

**SE-415**

**CM-R SELECTION COMMITTEE MEMBER EVALUATION - RFP**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

EVALUATION CRITERIA	Ranking Range	FIRMS				
		A	B	C	D	E
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
<b>TOTAL POINTS</b> <i>(Use whole numbers only and break all ties before ranking)</i>						
<b>RANKING OF PERSONS OR FIRMS (1,2,3...) (Transfer to SE-417)</b>						

FIRMS SUBMITTING PROPOSAL	
A.	D.
B.	E.
C.	

<b>EVALUATOR CERTIFICATION</b> I hereby certify that I have evaluated all of the persons or firms and ranked them based on the Evaluation Criteria listed above and no other criteria were used.	
<b>EVALUATOR NAME:</b>	<b>DATE:</b>
<b>EVALUATOR SIGNATURE:</b>	

**SE-417**  
**CM-R SELECTION COMMITTEE SUMMARY - RFP**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

COMMITTEE MEMBERS <i>(Insert Names of Voting Members)</i>		RANKING OF FIRMS				
		A	B	C	D	E
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
<b>TOTAL</b>						
<b>RANKING BY COMMITTEE (1,2,3)</b>						

FIRMS SUBMITTING PROPOSAL	
A.	D.
B.	E.
C.	

<b>SELECTION COMMITTEE CHAIR CERTIFICATION:</b>	
The Agency Selection Committee has reviewed the submittals of the prequalified firms in response to the <i>Request for Proposals</i> and ranked all firms in accordance with the criteria set forth in the <i>Request for Proposals</i> .	
<b>COMMITTEE CHAIR NAME:</b>	<b>DATE:</b>
<b>COMMITTEE CHAIR TITLE:</b>	
<b>COMMITTEE CHAIR SIGNATURE:</b>	

**SE-460  
REQUEST FOR CONCURRENCE IN POSTING NOTICE OF INTENT TO AWARD  
CM-R CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

The above named Agency hereby requests approval from the Office of State Engineer (OSE) to post a Notice of Intent to Award a contract to the Contractor named and for the amount stated below. If the Agency does not receive written objection from OSE within 5 business days after OSE's receipt of this Request and the documentation required below, the Agency may post the attached Notice of Intent to Award at the location stated in the Solicitation.

**INTENDED AWARDEE (Contractor):** \_\_\_\_\_

**PRE-CONSTRUCTION SERVICES AMOUNT: \$** \_\_\_\_\_

**CONSTRUCTION MANAGEMENT FEE AMOUNT:** \_\_\_\_\_ % of Guaranteed Maximum Price (GMP)

**DATE SELECTION WAS MADE:** \_\_\_\_\_

**AGENCY CERTIFICATION AND REQUEST**

I hereby certify that the Agency has conducted this solicitation in accordance with the requirements of the SC Consolidated Procurement Code and the *Manual for Planning and Execution of State Permanent Improvements, Part II* and that the proposed expenditure is within the authorized scope and budget for this Project. I further certify that the Agency has authorized, unencumbered funds available for obligation to this contract. I hereby request the approval of the Office of State Engineer to post a Notice of Intent to Award a contract for Construction Management at Risk (CM-R) services in support of the above-named Project.

**AGENCY SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**APPROVED**

**OSE PROJECT MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**NOT APPROVED**

**OSE PROJECT MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**REASONS FOR DISAPPROVAL OF REQUEST:** \_\_\_\_\_

**SUBMIT THE FOLLOWING DOCUMENTS TO OSE:**

1. SE-460 signed by the Agency.
2. Copy of the SE-411 and the SE-412
3. Copy of signed SE-414 for each Committee member
4. Copy of all SE-415's and the SE-417
5. Copy of Agency Head approval of the Committee recommended firm
6. Copy of proposed Notice of Intent to Award CM-R Contract (SE-470).
7. Copy of the Contract to be executed by both parties

**SE-470**

**NOTICE OF INTENT TO AWARD CM-R CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**POSTING DATE:** \_\_\_\_\_

**TO ALL PROPOSERS:**

Unless stayed by protest or canceled, the Agency intends to enter into a contract as noted below:

**NAME OF CONTRACTOR:** \_\_\_\_\_

**PRE-CONSTRUCTION SERVICES AMOUNT: \$** \_\_\_\_\_

**CONSTRUCTION MANAGEMENT FEE AMOUNT:** \_\_\_\_\_ **% of Guaranteed Maximum Price (GMP)**

**DATE SELECTION WAS MADE:** \_\_\_\_\_

Contractor should not incur any costs associated with the contract prior to receipt of a contract from the Agency for execution. Contractor should not perform any work prior to receipt of the Agency’s written Notice to Proceed. The State assumes no liability for any expenses incurred by the Contractor prior to issuance of a Notice to Proceed.

**RIGHT TO PROTEST (SC Code § 11-35-4210)**

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this contract may protest within ten (10) days of the date the Notice of Intent to Award is posted. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided.

PROTEST - CPO ADDRESS - OSE: Any protest must be addressed to the Chief Procurement Officer for Construction, Office of State Engineer, and submitted in writing (a) by email to: [protest-ose@mmo.sc.gov](mailto:protest-ose@mmo.sc.gov), (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the e-mail address from which you sent your protest.

\_\_\_\_\_  
*(Agency Procurement Officer Signature)*

\_\_\_\_\_  
*(Print or Type Name)*

**INSTRUCTIONS TO THE AGENCY:**

1. Post a copy of this form at the location specified in the Solicitation.
2. Send a copy of this form to all proposers and OSE.

**SE-471  
DESIGN DOCUMENT TRANSMITTAL FORM – CM-R**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**TO:** \_\_\_\_\_  
(OSE Project Manager)

**CC:** \_\_\_\_\_  
(Agency Project Manager)

\_\_\_\_\_  
(Construction Manager at Risk)

**FROM:** \_\_\_\_\_  
(Person's Name)

\_\_\_\_\_  
(Firm Name, if applicable)

**DATE:** \_\_\_\_\_

Transmitted herein are \_\_\_\_\_ copies of the following documents for the above referenced project as required by Chapter 5, of the *Manual for Planning and Execution of State Permanent Improvement—Part II* (check applicable items):

		<input type="checkbox"/> <b>SCHEMATIC DESIGN DOCUMENTS</b>	<input type="checkbox"/> <b>DESIGN DEVELOPMENT DOCUMENTS (if applicable)</b>	<input type="checkbox"/> <b>CONSTRUCTION DOCUMENTS</b>
1.	Site Plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Floor Plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Life Safety Plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	Code Criteria (OSE Code Tables)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	ASHRAE 90.1 Worksheet	N/A	<input type="checkbox"/>	<input type="checkbox"/>
6.	Complete Set of Drawings & Project Manual	N/A	<input type="checkbox"/>	<input type="checkbox"/> (signed & sealed)
7.	Written responses to previous OSE Comments	N/A	<input type="checkbox"/>	<input type="checkbox"/>
8.	Current Estimate of Construction Cost	<input type="checkbox"/>	N/A	N/A
9.	List of required Permits and Approvals	<input type="checkbox"/>	<input type="checkbox"/>	N/A
10.	Status of Required Permits and Approvals	N/A	<input type="checkbox"/>	<input type="checkbox"/>

SE-475

GMP NO.: \_\_\_\_\_

**REQUEST FOR AUTHORITY TO EXECUTE EXHIBIT A TO CM-R CONTRACT**

AGENCY: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_ CONTRACT DATE: \_\_\_\_\_

TOTAL APPROVED PROJECT FUNDING: \$ \_\_\_\_\_

AUTHORIZATION IS REQUESTED TO EXECUTE AN EXHIBIT A TO THE CM-R CONTRACT ABOVE FOR:

*Include a description of work from the Exhibit A to be included in the GMP.*

TOTAL GUARANTEED MAXIMUM PRICE (GMP): \$ \_\_\_\_\_

**1. FLOOD HAZARD** (Provide ALL of the following information for ALL projects, even if not in a flood hazard zone)

Flood Map Information: Flood Zone: \_\_\_\_\_ (A Floodplain Permit is required for A and V Zones)  
Community Number: \_\_\_\_\_ Panel Number: \_\_\_\_\_  
Is the Project Site in a 100-Year Flood Plain? Yes  No

**2. PERMITS AND APPROVALS REQUIRED FOR THIS PROJECT**

FLOODPLAIN (OSE approval required, not subject to certification): \_\_\_\_\_  
DHEC (List Individual Permits and/or Approvals): \_\_\_\_\_  
SCDOT: \_\_\_\_\_  
ZONING (Include Name of Local Authority): \_\_\_\_\_  
OTHER (List Separately): \_\_\_\_\_

**3. GREEN CONSTRUCTION**

Will the project be required to be certified per the Energy Efficiency Act of 2007? Yes  No   
If Yes, what certification is being pursued? LEED Silver  2 Green Globes

**4. EROSION AND SEDIMENT CONTROL**

All Land Disturbing Activity associated with this project shall be performed pursuant to the Contract Documents.

**AGENCY ACCEPTANCE AND CERTIFICATION:**

I hereby certify that all of the information on this SE-475 is true and accurate and that the Agency has authorized, unencumbered funds available for obligation to this contract.

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Representative)

Print Name: \_\_\_\_\_

AUTHORIZED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
(OSE Project Manager)

**SUBMIT THE FOLLOWING DOCUMENTS TO OSE**

1. SE-475, completed and signed by the Agency;
2. Copy of the Exhibit A to AIA Document A133, completed and signed by Contractor, NOT by Agency;
3. Detailed back-up information justifying this GMP;
4. Copy of all permits shown in item #2 above to be required.

**SE-480  
CHANGE ORDER TO CM-R CONTRACT**

CHANGE ORDER NO.: \_\_\_\_\_

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_ **CONTRACT DATE:** \_\_\_\_\_

This Contract is changed as follows: *(Insert description of change to the contract or description from Exhibit A for a new GMP.)*

**ADJUSTMENTS IN THE CONTRACT SUM:**

	<u>GMP/Change Order</u>	<u>Contract</u>
1. Original Contract Amount (Pre-Construction Fees):	_____	_____
2. Change in Contract Amount by previously approved Change Orders:	_____	_____
3. Contract Amount prior to this Change Order		\$ 0.00
4. Change Order Modification to: Pre-Construction Services New GMP # _____ (attach Exhibit A) Existing GMP # _____	_____ _____ _____	
5. Amount of this Change Order:		\$ 0.00
6. New Contract Amount, including this Change Order:		\$ 0.00

**ADJUSTMENTS IN THE CONTRACT TIME:**

1. Current Substantial Completion Date:	_____
2. Change in Days for this Change Order	_____ Days
3. New Substantial Completion Date:	_____

**CONTRACTOR ACCEPTANCE:**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
*(Signature of Representative)*

Print Name: \_\_\_\_\_

**A/E RECOMMENDATION FOR ACCEPTANCE:**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
*(Signature of Representative)*

Print Name: \_\_\_\_\_

**AGENCY ACCEPTANCE AND CERTIFICATION:**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
*(Signature of Representative)*

Print Name: \_\_\_\_\_

Change is within Agency Construction Contract Change Order Certification of: \$ \_\_\_\_\_ Yes  No

**Office of the State Engineer Authorization for change exceeding Agency Construction Contract Change Order Certification:**

AUTHORIZED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
*(OSE Project Manager)*

**SUBMIT THE FOLLOWING TO OSE**

1. SE-480, fully completed and signed by the Contractor, A/E and Agency;
2. If establishing a new GMP, attach:
  - a. Copy of the SE-475 and the completed Exhibit A to the AIA Document A133;
  - b. Copy of Building/Construction Permit (SE-580) for the work of the new GMP; and
  - c. Copy of Inspection/Material Testing Order (SE-955) for the work of the new GMP.
3. Detailed back-up information justifying the GMP or any other changes to the contract.



**SE-490  
NOTICE TO PROCEED – CM-R CONSTRUCTION**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**TO:** \_\_\_\_\_

*(Contractor's Name)*

**NOTICE:** Exhibit "A" of your Contract for the subject Project has been executed by the Agency, and you are hereby given Notice to Proceed with the Work of the Project.

The Date of Commencement is fixed below and shall be used in determining the initial date for Substantial Completion.

Failure to commence actual physical work on this Project within Fourteen (14) Days from the Date of Commencement will entitle the Agency to consider you in material breach of this Contract. In this event, the Agency may withdraw this Notice to Proceed and terminate the Contract in accordance with the Contract Documents.

**DATE OF NOTICE TO PROCEED:** \_\_\_\_\_

**DATE OF COMMENCEMENT:** \_\_\_\_\_

*(should be no less than 7 days after Date of Notice To Proceed)*

**INITIAL CONTRACT TIME:** \_\_\_\_\_ days

**INITIAL DATE FOR SUBSTANTIAL COMPLETION:** \_\_\_\_\_

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

*(Signature of Agency Representative)*

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

Complete this form and send a copy to the Contractor and to OSE

**SE-600**

**REQUEST TO AWARD MULTIPLE PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACTS FOR THE SAME SERVICES**

**AGENCY:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**DESCRIPTION OF SERVICES:** *(Insert description of services by State license/registration type and area of expertise, e.g. Professional Engineering services – Structural Engineering)* \_\_\_\_\_

**NUMBER OF CONTRACTS TO BE AWARDED:** Agency hereby request permission to award more than five (5) contracts for Indefinite Delivery of the services identified above. In support of this request, agency submits the following:

**1. Justification of Need:** *(Agency to provide description of why they have a need to award more than five Professional Services Indefinite Delivery Contracts for the services identified above.)*

\_\_\_\_\_

**2. Minimum Number of Awards Necessary to Meet Agency Needs:** \_\_\_\_\_

\_\_\_\_\_

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Agency Procurement Officer/Project Manager)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

\_\_\_\_\_

**Office of State Engineer Approval:** OSE hereby approves the Agency’s request to award multiple contracts for Indefinite Delivery of the services identified above. Agency may only make the number of awards set forth above and must set forth the number of intended awards in the Invitation for Professional Services Indefinite Delivery Contract.

**APPROVED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(OSE Project Manager)*

\_\_\_\_\_

**SUBMIT TO OSE:** One copy of this form.

# SE-610 INVITATION FOR PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACT

**AGENCY/OWNER:** \_\_\_\_\_  
**PROJECT NAME:** \_\_\_\_\_  
**PROJECT NUMBER:** \_\_\_\_\_  
**PROJECT LOCATION:** \_\_\_\_\_  
**DESCRIPTION OF PROJECT / PROFESSIONAL SERVICES:** \_\_\_\_\_  
**RESUME DEADLINE DATE:** \_\_\_\_\_  
**ANTICIPATED PROJECT DELIVERY METHOD:**                      **Design-Bid-Build**                       **N/A**

The Agency/Owner requests qualifications from firms interested in providing professional services for the project listed above. Any questions concerning this solicitation must be addressed to the Agency Project Coordinator listed below.

**RESUME DEADLINE TIME:** \_\_\_\_\_ **NUMBER OF COPIES:** \_\_\_\_\_

**RESUME DELIVERY ADDRESSES:**

**HAND-DELIVERY:**

**Attn:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MAIL SERVICE:**

**Attn:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONTRACT INFORMATION**

1. The contract period of the awarded Indefinite Delivery Contract (IDC): \_\_\_\_\_
2. Maximum expenditures over the period of the awarded IDC: \$ \_\_\_\_\_
3. Maximum single project expenditure that will be allowed under the awarded IDC: \$ \_\_\_\_\_
4. Maximum number of IDC's Agency may award under this solicitation: \_\_\_\_\_
5. Terms and Conditions of the IDC may be viewed at: \_\_\_\_\_

**AGENCY PROJECT COORDINATOR:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_ **TELEPHONE:** \_\_\_\_\_

**INTERESTED FIRMS SHOULD SUBMIT THE FOLLOWING:**

1. A Current STANDARD FEDERAL FORM 330;
  2. The Name and Contact Information, including Email, of a Primary Contact;
  3. A Certification stating whether the Firm is a Resident of South Carolina (See SC Code §11-35-3215); and
  4. Response to Selection Criteria set forth in SC Code §11-35-3220, as amended.
- **PUBLIC NOTICES:** All notices (Notice of Meetings; SE-612, Notification of Selection for Interviews-IDC; and SE-619, Notification of Selection for Contract Negotiation-IDC) shall be posted at the following location: \_\_\_\_\_
  - **LICENSURE:** To be considered for selection, persons or firms must be properly licensed in accordance with the requirements of Title 40 of the SC Code of Laws, as amended, at the time of resume submission.
  - In accordance with the South Carolina Green Purchasing Initiative, submittals cannot exceed 20 pages, front and back, including covers, which must be soft – no hard notebooks. The Standard Federal Form 330 is not included in this page count.
  - To submit confidential information, see <https://procurement.sc.gov/construction/ose-confidential>.
  - All written communications with parties submitting information will be via email. Agency **WILL NOT** accept submittals via email.
  - Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with this solicitation or the intended award or award of a contract under this solicitation may protest to the State Engineer in accordance with SC Code § 11-35-4210 at: CPO, Office of State Engineer, 1201 Main Street, Suite 600, Columbia, SC 29201. EMAIL: [protest-ose@mno.sc.gov](mailto:protest-ose@mno.sc.gov)

**APPROVED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
(OSE Project Manager)

**INSTRUCTIONS TO THE AGENCY:**

1. Submit the completed SE-610 to the OSE Project Manager in MS Word format.
2. OSE Project Manager will review and send approved copy to SCBO and the Agency.



**SE-612**

**NOTIFICATION OF SELECTION FOR INTERVIEW  
PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**TO ALL FIRMS RESPONDING TO THE INVITATION FOR PROFESSIONAL SERVICES IN CONNECTION WITH THE ABOVE NAMED PROJECT:**

Having reviewed the resumes submitted in response to the *Invitation for Professional Services* for the above-named Project, and having evaluated those responses and other information available in accordance with the requirements of SC Code § 11-35-3220, the Agency Selection Committee has determined that the firms listed below are deemed the most qualified to provide the required services. The below-listed firms are selected for interview:

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**NAME OF A/E:** \_\_\_\_\_

**AGENCY CERTIFICATION**

I certify that the above-named firms have submitted all of the information required in the *Invitation for Professional Services*; that the Agency Selection Committee conducted this selection in accordance with the requirements of the SC Consolidated Procurement Code and Regulations and the *Manual for Planning and Execution of State Permanent Improvements, Part II*, and that the Committee selected the above-named firms for interview and priority ranking.

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Selection Committee Chair)*

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Submit a copy of the completed SE-612 to the OSE Project Manager.
2. Send a copy of the completed SE-612 to all firms who responded to the Invitation.
3. Retain the original in the Agency's procurement file.

**SE-614****PROFESSIONAL SERVICES SELECTION COMMITTEE - IDC  
CONFIDENTIALITY AND CONFLICT OF INTEREST POLICY**

AGENCY: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

The Agency and Selection Committee acknowledges the importance of protecting the public's trust in State Procurement. It is, therefore, the policy of the Agency, and this Selection Committee to abide by all laws, regulations, and policies regarding the avoidance of conflict of interest and the preservation of confidentiality. In order to assure a fair selection process that potential and actual offerors and the public trust, the Selection Committee for this project adopts the following policy:

**CONFIDENTIALITY OF INFORMATION**

Prior to the issuance of an award or notification of intent to award, whichever is earlier, Selection Committee members shall not engage in conduct that:

1. Favors one offeror over another;
2. Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;
3. Reveals an offeror's price without that offeror's permission;
4. Reveals the names of individuals providing reference information about an offeror's past performance; or
5. Knowingly furnishes source selection information to anyone other than the responsible procurement officer. "Source selection information" means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (a) proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (b) source selection plans, (c) technical evaluation plans, (d) technical evaluations of proposals, (e) cost or price evaluations of proposals, (f) information regarding which proposals are determined to be reasonably susceptible of being selected for award, (g) rankings of responses, proposals, or competitors, (h) reports, evaluations of source selection panels or evaluation panels, (i) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

**CONFIDENTIALITY OF INFORMATION CERTIFICATION**

I fully understand the confidential nature of the procurement process, including the evaluation of proposals and the selection of potential contractors. By my signature below, I agree to:

1. Return all evaluation-related materials to the Agency Project Manager;
2. Refuse to discuss these materials or the evaluation proceedings with any individual not directly involved in the evaluation; and,
3. Refer all inquiries or contacts concerning any aspect of the procurement process to the Chair of the Selection Committee.

I understand that any actual or apparent conflict of interest or breach of confidentiality, however innocent, may result in my removal from the Selection Committee.

**CONFLICT OF INTEREST CERTIFICATION**

I have been selected to serve on the Selection Committee for the above project. By my signature below, I hereby certify:

1. To the best of my knowledge and belief, no conflict of interest exists that:
  - A. diminishes my capacity to impartially and objectively review the proposals submitted;
  - B. has the potential to result in a biased opinion or unfair advantage; or
  - C. prevents me from evaluating any proposal submitted solely on its merits and in accordance with the evaluation criteria.
2. To the best of my knowledge and belief, I have no apparent conflict of interest that, in the eyes of a reasonable person, may give the appearance of the possibility of partiality in the performance of my duties in this acquisition.
3. In determining whether any conflict of interest exists, I have considered all of the following factors that might place me in a position of conflict, actual or apparent, with the evaluation proceedings:
  - A. my relationship with any potential contractor, subcontractor or direct competitor of any potential contractor under consideration by the evaluation committee;
  - B. my stocks, bonds, and other financial interests or commitments;
  - C. my employment and business arrangements (past, present, and under consideration); and
  - D. to the extent known by me, the financial interests and employment and business arrangements of members of my immediate family.
4. I have a continuing obligation to disclose any circumstance that may create an actual or apparent conflict of interest. If I learn of any such conflict, I will report it immediately to the Procurement Officer. I will perform no more duties related to the evaluation of proposals until I receive instructions on the matter.
5. I have read and understand the requirements of the Ethics, Governmental Accountability, and Campaign Reform Act (State Ethics Act, Title 8, Chapter 13 of the SC Code of Laws. <http://www.scstatehouse.gov/code/title8.php>).

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

**SE-615  
PROFESSIONAL SERVICES SELECTION COMMITTEE MEMBER  
A/E EVALUATION – INDEFINITE DELIVERY CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

FIRMS INTERVIEWED	
A.	E.
B.	F.
C.	G.
D.	H.

EVALUATION CRITERIA	Ranking Range	FIRMS							
		A	B	C	D	E	F	G	H
a) Past Performance									
b) Ability of Professional Personnel									
c) Demonstrated Ability to Meet Time and Budget Requirements									
d) Location and Knowledge of Locality of the Project if the Application of this Criterion Leaves an Appropriate Number of Qualified Firms, given the Nature and Size of the Project									
e) Recent, Current and Projected Work Load of the Firm									
f) Creativity and Insight Related to the Project									
g) Related Experience on Similar Projects									
h) Volume of Work Awarded by the Using Agency to the Person or Firm During the Previous Five Years, with the Objective of Effectuating an Equitable Distribution of Contracts by the State Among Qualified Firms including Minority Business Enterprises Certified by the SC Office of Small and Minority Business Assistance and Firms that have not had Previous State Work.									
i) Any Other Special Qualification Required Pursuant to the Solicitation of the Using Agency									
<b>TOTAL POINTS</b> <i>(Use whole numbers only and break all ties before ranking)</i>									
<b>RANKING OF FIRMS (1,2,3...) (Transfer to SE-617)</b>									

EVALUATOR CERTIFICATION	
I hereby certify that I attended all the interviews held for this Professional Services procurement. All of the firms were evaluated and ranked by me based on the Evaluation Criteria listed above and no other criteria were used.	
<b>EVALUATOR NAME:</b>	<b>DATE:</b>
<b>SIGNATURE:</b>	

**SE-617**

**PROFESSIONAL SERVICES SELECTION COMMITTEE SUMMARY  
INDEFINITE DELIVERY CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

FIRMS INTERVIEWED	
A.	E.
B.	F.
C.	G.
D.	H.

COMMITTEE MEMBERS <i>(Insert Names)</i>		RANKING OF FIRMS							
		A	B	C	D	E	F	G	H
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
<b>TOTAL</b>									
If there is a tie in the Total between 2 or more firms, insert the sum of the raw scores (Total Points) of the tied firms from the SE-615s									
RANKING BY COMMITTEE (1,2,3...) <i>(considering the Raw Score, if needed)</i>									

<b>SELECTION COMMITTEE CHAIR CERTIFICATION:</b>	
The Agency Selection Committee (Committee) has reviewed the submittals of firms in response to the <i>Invitation for Professional Services Indefinite Delivery Contract</i> , selected firms for interview, conducted interviews, and ranked all firms interviewed in accordance with the requirements of Title 11, Chapter 35, Article 9, Subarticle 5 of the South Carolina Code of Laws. The Committee evaluated and ranked all firms interviewed based on only the mandatory criteria set forth in SC Code § 11-35-3220(5) and additional Criteria, if any, set forth in the Invitation.	
<b>COMMITTEE CHAIR NAME:</b>	<b>DATE:</b>
<b>COMMITTEE CHAIR TITLE:</b>	
<b>COMMITTEE CHAIR SIGNATURE:</b>	



**SE-619**

**NOTIFICATION OF SELECTION FOR CONTRACT NEGOTIATION  
INDEFINITE DELIVERY CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**POSTING DATE:** \_\_\_\_\_

Notice is hereby given that the Agency Selection Committee has, in accordance with the requirements of SC Code § 11-35-3220, the *Manual for Planning and Execution of State Permanent Improvement Projects, Part II*, and the solicitation documents, reviewed the qualifications of interested firms and determined the below listed firm to be the most qualified firm for this project. The Agency hereby announces its intent to negotiate a contract with the following firm:

**NAME(S) OF FIRM(S) SELECTED:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

**DATE OF INTERVIEWS:** \_\_\_\_\_

**RIGHT TO PROTEST (SC Code § 11-35-4210)**

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this contract may protest within ten (10) days of the date the Notice of Intent to Negotiate is posted. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided.

PROTEST - CPO ADDRESS - OSE: Any protest must be addressed to the Chief Procurement Officer for Construction, Office of State Engineer, and submitted in writing (a) by email to: [protest-ose@mmo.sc.gov](mailto:protest-ose@mmo.sc.gov), (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the e-mail address from which you sent your protest.

**BY:** \_\_\_\_\_  
*(Signature of Agency Head or Designee)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

- 1. Post a copy of the SE-619 (as announced at the interviews).
- 2. Send a copy of the SE-619 to the OSE Project Manager.
- 3. Send a copy of the SE-619 to all firms that responded to the Invitation.
- 4. Retain the original SE-619 in the Agency's procurement file.

**SE-620**

**REQUEST FOR AUTHORITY TO EXECUTE A PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**FIRM SELECTED**

(NOTE: If multiple firms are selected, a separate SE-620 must be submitted for each firm.)

**NAME:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_ **TELEPHONE:** \_\_\_\_\_

**BUDGETARY INFORMATION**

1. **MAXIMUM ALLOWED INDEFINITE DELIVERY CONTRACT AMOUNT:**.....\$ \_\_\_\_\_

2. **MAXIMUM AMOUNT OF THIS CONTRACT:** .....\$ \_\_\_\_\_

3. **GUARANTEED MINIMUM PAYMENT (if applicable):** .....\$ \_\_\_\_\_

**AGENCY CERTIFICATION AND REQUEST**

I certify that the Agency Selection Committee conducted this Professional Services selection in accordance with the requirements of the SC Consolidated Procurement Code and the *Manual for Planning and Execution of State Permanent Improvements-Part II*, and that the Agency has authorized, unencumbered funds available for obligation to this contract. Pursuant to SC Code § 11-35-3220(9), I request the Office of State Engineer’s approval to execute the attached contract for professional services in support of the above-named Project.

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
(Signature of Agency Representative)

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**APPROVED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
(OSE Project Manager)

**SUBMIT THE FOLLOWING DOCUMENTS TO OSE:**

1. SE-620
2. Copy of SE-611
3. Copy of SE-612
4. Copy of signed SE-614 for each Committee member
5. Copy of all SE-615's and the SE-617
6. Copy of SE-619
7. Copy of proposed Contract signed by firm selected but NOT signed by the Agency

**SE-630**

**TRANSMITTAL OF SMALL PROFESSIONAL SERVICES IDC**

*FOR INFORMATION ONLY*

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**FIRM SELECTED**

**NAME:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_ **TELEPHONE:** \_\_\_\_\_

**BUDGETARY INFORMATION**

**1. MAXIMUM ALLOWED INDEFINITE DELIVERY CONTRACT AMOUNT:** .....\$ \_\_\_\_\_

**2. TOTAL BASIC AND ADDITIONAL SERVICES FEES FOR THIS CONTRACT:** .....\$ \_\_\_\_\_

**3. ESTIMATED REIMBURSABLES FOR THIS CONTRACT:** .....\$ \_\_\_\_\_

**4. SUM OF ALL FEES PAID TO THIS FIRM IN THE PAST 24 MONTHS**  
*(excluding Reimbursables):*.....\$ \_\_\_\_\_

**5. TOTAL CONTRACT AMOUNT** *(sum of #2 and #3):*.....\$ \_\_\_\_\_

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Agency Representative)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**SUBMIT THE FOLLOWING DOCUMENTS TO OSE:**

- 1. Completed SE-630
- 2. Copy of signed SE-640 with signed proposal attached.

**OSE PM:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**SE-635**

**PROFESSIONAL SERVICES IDC DELIVERY ORDER – SMALL CONTRACT**

**AGENCY:** \_\_\_\_\_

**DELIVERY ORDER PROJECT NAME:** \_\_\_\_\_

**DELIVERY ORDER PROJECT NUMBER:** \_\_\_\_\_

**IDC PROJECT NUMBER:** \_\_\_\_\_

**A/E:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

<b>COST INFORMATION:</b>	<b>DELIVERY ORDER</b>	<b>CONTRACT</b>
1. Maximum Total Amount of this IDC, excluding Reimbursables:		\$
2. Amount of this Delivery Order, excluding Reimbursables:	\$	
3. Total of Previous Delivery Orders (including Modifications & excluding Reimb.):	\$	
4. IDC Total, Including this Delivery Order and excluding all Reimbursables:		\$ 0.00
5. Balance Remaining for this IDC, excluding Reimbursables:		\$ 0.00
6. Total Reimbursable Expenses for this Contract		\$

**DESCRIPTION OF DELIVERY ORDER SCOPE:** *(attach A/E's Proposal)* \_\_\_\_\_

**LIST OF DELIVERY ORDER DOCUMENTS:** *(refer to attachments as necessary)* \_\_\_\_\_

**SCHEDULE:**

The Agency and the A-E hereby agree, as indicated by the signatures below, to the scope of work identified in the Contract Documents listed above, the A/E's Cost Proposal dated the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, and this Delivery Order which shall be assigned to the Indefinite Delivery Contract identified above.

**NOTICE TO PROCEED** is hereby given on this the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_. Time is of the essence of this Delivery Order. The Dates of Commencement and Completion are as noted above and will be used for determining completion and the applicability of Delay Damages. Failure to commence actual work on this Delivery Order within seven (7) days from the Date of Commencement will entitle the Agency to consider the A/E non-responsible. In this event, the Agency may withdraw this Delivery Order and terminate the Contract in accordance with the Contract Documents.

**AGENCY:**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**A/E:**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**COMPLETION CONFIRMATION BY AGENCY:**

**ACTUAL COMPLETION DATE:** \_\_\_\_\_

**CONFIRMED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Agency Representative)*

**TITLE:** \_\_\_\_\_

**SE-638**

**MODIFICATION NO.:** \_\_\_\_\_

**PROFESSIONAL SERVICES IDC DELIVERY ORDER MODIFICATION – SMALL CONTRACT**

**AGENCY:** \_\_\_\_\_

**DELIVERY ORDER PROJECT NAME:** \_\_\_\_\_

**DELIVERY ORDER PROJECT NUMBER:** \_\_\_\_\_

**IDC PROJECT NUMBER:** \_\_\_\_\_

**A/E:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

<b>COST INFORMATION:</b>	<b><u>DELIVERY ORDER</u></b>	<b><u>CONTRACT</u></b>
1. Maximum Total Amount of this IDC, excluding Reimbursables:		\$
2. Current Amount of this Delivery Order, excluding Reimbursables:		
3. Amount of this Modification, excluding Reimbursables:		
4. Adjusted Amount of this Delivery Order, excluding Reimbursables:	\$ 0.00	
5. IDC Total (Sum of all DOs, excluding Reimb.) Prior to this Modification:		\$
6. IDC Total Including this Modification and excluding Reimbursables:		\$ 0.00
7. Balance Remaining for this IDC, excluding Reimbursables:		\$ 0.00
8. Adjusted Total Reimbursable Expenses for this Contract		\$

**DESCRIPTION OF DELIVERY ORDER SCOPE MODIFICATION:** *(attach A/E's Proposal)* \_\_\_\_\_

**LIST OF MODIFICATION DOCUMENTS:** *(refer to attachments as necessary)* \_\_\_\_\_

**SCHEDULE MODIFICATION:**

The Agency and the A/E hereby agree, as indicated by the signatures below, to the revised scope of work identified in the Modification Documents listed above, the A/E's Cost Proposal dated the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, and this Delivery Order Modification which shall be assigned to the Indefinite Delivery Contract identified above.

**AGENCY:**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**A/E**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**SE-640**

**PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**AGENCY PROCUREMENT OFFICER:** \_\_\_\_\_

THIS AGREEMENT is made this the \_\_\_\_ day of \_\_\_\_ in the year Two Thousand \_\_\_\_ by and between

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

hereinafter called the “Agency”, and

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

hereinafter called the “A/E.”

WHEREAS, the agency solicited A/E, land surveying, or construction management-agent services, for the discipline(s) described below, for projects to be determined, on an as-needed basis:

**DISCIPLINE(S):** \_\_\_\_\_

WHEREAS, A/E submitted a successful proposal to provide the services described above on an as-needed basis.

NOWHEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Agency and A/E (hereinafter jointly referred to as the “parties”) agree as follows:

**A. CONTRACT TERM**

- 1. The effective date of this agreement shall commence as of the date at the top of this page and the term shall extend until \_\_\_\_, 20\_\_\_\_ (not to exceed two (2) years). The parties may not renew this agreement for an additional term nor may they extend the duration of this agreement by amendment or waiver.
- 2. A/E proposals accepted by the agency within the time limits of the contract may be completed by the A/E even though the completion date may extend beyond the term of the contract.

**B. CONTRACT DOCUMENTS**

- 1. Documents forming a part of the contract are:
  - a. Invitation for Indefinite Delivery Professional Services Contract, if applicable;
  - b. Delivery Orders (SE-635 or SE-645) issued by the Agency pursuant to this contract;
  - c. Delivery Order Modifications (SE-638 or SE-648) issued by the Agency pursuant to this contract;
  - d. A/E proposal and/or rates; and
  - e. The following other documents:  
 \_\_\_\_\_  
 \_\_\_\_\_
- 2. The contract is the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, whether written or oral.

**C. THE WORK**

1. The Agency will request proposals for A/E services on an as-needed basis. The scope of services will be within the discipline(s) set forth above and within the expenditure limits set forth in the Invitation for Professional Services Indefinite Delivery Contract. Upon receipt of a request for a proposal, the A/E will prepare and submit a proposal setting forth the proposed scope of services, schedule, fee, and reimbursable expenses. Once the Agency and A/E have negotiated and agreed on the scope of services, schedule, fee, and estimated reimbursable expenses, the Agency will issue the A/E a Delivery Order, using the Professional Services IDC Delivery Order – Small Contract (SE-635) or the Professional Services IDC Delivery Order (SE-645), which will set forth the parties' agreement.
2. The A/E shall not incur any expense chargeable to the Agency on or about the work of any Delivery Order assigned to this contract until the Delivery Order has been awarded and fully executed by both the Agency and the A/E.
3. The A/E's services shall be provided by qualified persons in accordance with professional standards of care for such services in South Carolina and in accordance with the provisions of Chapter 5 of the *Manual for Planning and Execution of State Permanent Improvements, Part II*.

**D. PAYMENT**

A/E may make application for payment for services performed under a Delivery Order (and the Agency shall make payment) as agreed in the Delivery Order. Reimbursable expenses (not to be included in the fee) are not to exceed the estimated amount shown on the Delivery Order. Fees and reimbursable expenses are not to exceed the amount shown on the Delivery Order unless approved by the Agency on a Professional Services IDC Delivery Order Modification using Form SE-638 or SE 648. The A/E shall not invoice for services more often than monthly for work performed and reimbursable expenses incurred during that period. The Agency shall make payments to the A/E of undisputed amounts due for services performed by the A/E, within twenty-one (21) days of receipt of the A/E's invoice. The A/E shall make progress payments to the consultants within seven (7) days of the receipt by the A/E of each payment from the Agency.

**E. TERMINATION**

1. Agency Right of Suspension: The Agency may, at any time, suspend the work, in whole or in part, with or without cause for such period of time as determined by the Agency. Except in the event of suspension due to a default of the A/E, the amount payable to the A/E will be equitably adjusted to reflect reasonable costs actually incurred by the A/E due to delay or interruption resulting from such suspension.
2. Agency Right of Termination:
  - a. Termination for Cause: If the A/E defaults, persistently fails or neglects to perform the services in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Agency shall provide written notice of such default, failure, or neglect to the A/E. If the A/E fails to cure such default, failure, or neglect within fifteen days from receipt of the Agency's notice, the Agency may, without prejudice to any other right or remedy the Agency may have, terminate the Contract.
  - b. Termination for Convenience: The Agency may, for its convenience, terminate all or any portion of the work or terminate this Contract by ten (10) days written notice stating the effective date of the termination. Thereafter, the Agency shall pay the A/E for those services actually performed before the date of termination. No payments shall be made for services not actually performed, and no payment shall be made or due for lost profits for portions of the services not actually performed.
3. A/E Right of Termination:
  - a. The A/E may terminate the contract, or Delivery Order, if work is stopped through no fault of the A/E, or other persons performing work either directly or indirectly for the A/E, for a period of time exceeding 60 consecutive calendar days due to a court order or other public authority having jurisdiction; or a declared National emergency which requires the work to be stopped.
  - b. Agency Failure to Make Payment: Subject to the Agency's right to withhold payments pursuant to Part D, if the Agency fails to make payments to the A/E as set forth in Part D and any other applicable provisions of the Contract Documents, the A/E may, upon thirty (30) days prior written notice to the Agency, terminate the Contract and recover from the Agency payment for all services performed, including reasonable overhead, profit and damages applicable to the services performed through the date thereof.

**F. DISPUTE RESOLUTION**

Both parties shall attempt to resolve disputes through good faith negotiations.

1. All disputes, claims, or controversies relating to the Contract, that cannot be resolved through good faith negotiations between the parties shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. A/E agrees that any act by the State regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used herein, the phrase, "the State" includes the Agency and the State Fiscal Accountability Authority.
2. Interest: Payments due to the A/E and unpaid under the Contract Documents shall bear interest only if and to the extent allowed by Title 29, Chapter 6, Article 1 of the South Carolina Code of Laws. Amounts due to the Agency shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.
3. A/E consents that any papers, notices, or process necessary or proper for the initiation or continuation of any claims or controversies relating to the Contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on A/E by certified mail (return receipt requested) addressed to A/E at the address provided for the A/E's Representative or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.
4. Continuation of Work: Pending final resolution of any dispute under this Contract, the A/E will proceed diligently with the performance of its duties and obligations under the Contract Documents, and the Agency will continue to make payments of undisputed amounts in accordance with the Contract Documents.

**G. LIMITATION OF LIABILITY**

1. Notwithstanding any other provision of the Contract Documents, but subject to a duty of good faith and fair dealing, the A/E and Agency waive claims against each other for listed damages arising out of or relating to this Contract. This mutual waiver includes
  - a. For the Agency, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) costs suffered by a third party unable to commence work, (vi) reasonable attorneys' fees, (vii) any interest, except to the extent allowed by Part F(2) (Interest), (viii) lost revenue and profit for lost use of the property, (ix) costs resulting from lost productivity or efficiency, and (x) damages incurred by the Agency for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
  - b. For the A/E, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) reasonable attorneys' fees, (vi) any interest, except to the extent allowed by Part F(2) (Interest); (vii) unamortized equipment costs; and (viii) losses incurred by consultants used by the A/E for the types of damages the A/E has waived as against the Agency.
2. This mutual waiver is applicable, without limitation, to all listed damages due to either party's termination in accordance with Part E. This mutual waiver is not applicable to amounts due or obligations under Part H (Indemnification).

**H. INDEMNIFICATION**

1. To the fullest extent permitted by law, the A/E shall indemnify and hold harmless the Agency and the Agency's agents and employees from and against claims, damages, losses and expenses, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from the A/E's performance of services under this Agreement, or any Delivery Order issued pursuant to this Agreement, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the A/E, a consultant used by the A/E, anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
2. In claims against any person or entity indemnified under Part H(1) by an employee of the A/E, a consultant used by the A/E, anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable, the indemnification obligation under this Part H shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for A/E or a consultant used by the A/E under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.



**I. REPRESENTATIVES****1. Agency's Representative**

Agency designates the individual listed below as its Representative, which individual shall have the authority to bind the Agency with respect to all matters regarding the Contract and requiring the Agency's approval or authorization:

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

The term "Agency" means the Agency or the Agency's Representative.

**2. A/E's Representative**

A/E designates the individual listed below as its A/E's Representative, which individual shall have the authority to bind the A/E with respect to all matters regarding the Contract and requiring the A/E's approval or authorization:

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

The term "A/E" means the A/E or the A/E's Representative.

3. Neither the Agency nor the A/E shall change their representatives without ten days written notice to the other party.

**J. INSURANCE**

1. A/E shall procure and maintain in effect during the term of this Agreement the insurance coverages described below, which insurance shall be placed with insurance companies authorized to do business in the State of South Carolina and rated A minus VII or better by the current edition of Best's Key Rating Guide or otherwise approved by Agency.
  - a. Professional Liability Errors and Omissions Insurance with limits of not less than \$1,000,000 per claim and in the aggregate. A/E shall maintain this coverage in effect during the term of this Agreement and for two (2) years after the date of completion of services provided under this Contract. A/E shall give prompt written notice to Agency of any and all claims made against this policy during the period in which this policy is required to be maintained pursuant to this Contract.
  - b. Worker's Compensation Insurance with statutory benefits and limits which shall fully comply with all State and Federal requirements and have limits not less than \$500,000 per accident, \$500,000 per disease and \$500,000 policy limit on disease..
  - c. Automobile Liability Insurance: Insurance Services Offices (ISO) Form CA 00 01 covering Code 1 (any auto), or if A/E has no owned automobiles, Code 8 (hired) and Code 9 (non-owned), with limits not less than \$1,000,000 per accident for bodily injury and property damage. Comprehensive Automobile Liability Insurance (owned, hired, and non-owned vehicles) with limits not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
  - d. Commercial General Liability Insurance (CGL): ISO Form CG 00 01 12 07 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury, and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.
2. A/E agrees to require Subconsultants to comply with the insurance provisions required of A/E pursuant to this Agreement unless A/E and Agency mutually agree to modify these requirements for Subconsultants whose work is of relatively small scope. A/E agrees that it will contractually obligate its Subconsultants to advise A/E promptly of any changes or lapses of the requisite insurance coverages and A/E agrees to promptly advise Agency of any such notices A/E receives from its Subconsultants. A/E agrees that it will contractually obligate its Subconsultants to indemnify and hold harmless Agency to the same extent that A/E is required to do so as provided in this Agreement.

**K. CONSTRUCTION COST**

The A/E shall not be responsible for, nor have control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others, not under contract to the A/E, to meet Delivery Order schedules. The A/E's opinion of probable costs and project schedules are to be made on the basis of the A/E's best judgment, experience, and qualifications as a professional. The A/E does not guarantee that proposals, bids, or actual costs will not vary from the A/E's opinion of probable costs or that the actual schedules will not vary from the A/E's projected schedules.

**L. LIMITATIONS OF RESPONSIBILITY**

Unless specifically included in a Delivery Order, the A/E shall not be responsible for: 1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with a Delivery Order; 2) the failure of any contractor, sub-contractor, vendor, or other project participant, not under contract to the A/E, to fulfill contractual responsibilities to the Agency or to comply with Federal, State, or Local laws, regulations, and codes; or 3) procuring permits, certificates, and licenses required for construction other than design-related construction permits required by Chapter 5 of the *Manual for Planning and Execution of State Permanent Improvements, Part II*.

**M. WORK PRODUCTS**

The A/E grants to the Agency a non-exclusive license to re-use the A/E's Work Products prepared pursuant to Delivery Orders issued under this Contract. The A/E assumes no liability for the Agency's re-use under these conditions unless contracted by the Agency to assume the liability for such re-use. Consultants used by the A/E for work performed under this Contract shall be bound by the same conditions.

**N. MISCELLANEOUS PROVISIONS**

1. **Governing Law:** This Contract shall be governed by the laws of South Carolina, except its choice of law rules.
2. In the performance of its duties under this contract, the A/E shall comply with (a) the requirements of the Manual for Planning and Execution of State Permanent Improvement Projects – Part II (Manual), and (b) the SC Consolidated Procurement Code and the associated regulation. Should substantive changes to these provisions of the Manual occur during the term of this contract that result in an increase or decrease in the level of services to be provided by the A/E, the fee of the A/E shall be equitably adjusted by negotiation between the parties to reflect such increase or decrease.
3. **Severability:** If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.
4. **No Waiver:** No course of dealing or failure of the Agency and/or the A/E to enforce strictly any term, right or condition of this Contract shall be construed as a waiver of such term, right or condition. No express waiver of any term, right, or condition of this Contract shall operate as a waiver of any other term, right, or condition.
5. **Rights Cumulative:** Except as otherwise provided in this Contract, (i) rights and remedies available to the Agency and/or the A/E as set forth in this Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to the Agency and/or the A/E in any provision of this Contract shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.
6. **Notices:** Any notices required to be given under this Contract shall be in writing and shall be delivered either by (i) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the U.S. mail; (ii) a reputable messenger service or a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such messenger or courier; or (iii) personal delivery with receipt acknowledged in writing, in which case notice shall be deemed delivered when received. All notices shall be sent to the representatives identified in the Part I of the Agreement at the addresses provided therein. The foregoing addresses may be changed from time to time by notice to the other Party in the manner herein provided for.
7. **Economic Conflict of Interest:** The A/E shall not have or exercise any official responsibility regarding a public contract in which the A/E, or a business with which he is associated, has an economic interest. A person working for A/E shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If A/E is asked by any person to violate, or does violate, either of these restrictions, A/E shall immediately communicate such information to the procurement officer. The State may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in S.C. Code § 8-13-100.

- 8. **Illegal Immigration:** A/E certifies and agrees that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to A/E and its consultants or sub-consultants; or (b) that A/E and its consultants or sub-consultants are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." A/E agrees to include in any contracts with its consultants language requiring its consultants to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-consultants language requiring the sub-consultants to comply with the applicable requirements of Title 8, Chapter 14. (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)).
- 9. **Drug-Free Workplace:** The A/E certifies to the Agency that A/E will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws.
- 10. **False Claims:** According to S.C. Code § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.
- 11. **Non-Indemnification:** Any term or condition is void to the extent it requires the State to indemnify anyone. It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations. (§ 11-9-20) It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year. (§ 11-1-40)
- 12. **Enforcement and Interpretation of Building Codes:** As required by Title 10, Chapter 1, Section 180 of the South Carolina Code of Laws, OSE shall determine the enforcement and interpretation of all building codes and referenced standards on state buildings. The A/E shall refer any questions, comments, or directives from local officials to the Agency and OSE for resolution. When the amount of construction work covered by the design documents prepared pursuant to a Delivery Order issued under this Contract exceeds the construction procurement certification of the Agency, the A/E shall submit Schematic Design Documents and Construction Documents to OSE for review and approval before releasing the documents for construction. (The A/E may find Agency construction certification limits on Procurement Services website at <https://procurement.sc.gov/agency/audits/cert-limits> )
- 13. **Assignment:** The Agency and A/E respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements and obligations contained in this Contract. Neither party to the Contract shall assign the Contract as a whole, or in part, without written consent of the other and then only in accordance with and as permitted by SC Regulation 19-445.2180. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
- 14. **Open Trade Representation (Jun 2015) -** By signing this Agreement, A/E represents that A/E is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300. During the contract term, including any renewals or extensions, A/E will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

**AGENCY:**

**A/E:**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**SE-645**

**PROFESSIONAL SERVICES IDC DELIVERY ORDER – LARGE CONTRACT**

**AGENCY:** \_\_\_\_\_

**DELIVERY ORDER PROJECT NAME:** \_\_\_\_\_

**DELIVERY ORDER PROJECT NUMBER:** \_\_\_\_\_

**IDC PROJECT NUMBER:** \_\_\_\_\_

**A/E:** \_\_\_\_\_

	<u>DELIVERY ORDER</u>	<u>CONTRACT</u>
<b><u>COST INFORMATION:</u></b>		
1. Maximum Total Amount of this IDC:		\$
2. Maximum Total Amount Allowed for Delivery Order:	\$	
3. Amount of this Delivery Order:	\$	
4. Total Amount of Previous Delivery Orders (including Modifications):		\$
5. IDC Total, Including this Delivery Order:		\$ 0.00
6. Balance Remaining for this IDC:		\$ 0.00

**SCHEDULE:** \_\_\_\_\_

**DESCRIPTION OF DELIVERY ORDER SCOPE:** *(attach A/E's Proposal)* \_\_\_\_\_

**LIST OF DELIVERY ORDER DOCUMENTS:** *(refer to attachments as necessary)* \_\_\_\_\_

The Agency and the A-E hereby agree, as indicated by the signatures below, to the scope of work identified in the Contract Documents listed above, the A/E's Cost Proposal dated the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, and this Delivery Order which shall be assigned to the Indefinite Delivery Contract identified above.

**NOTICE TO PROCEED** is hereby given on this the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_. Time is of the essence of this Delivery Order. The Dates of Commencement and Completion are as noted above and will be used for determining completion and the applicability of Delay Damages. Failure to commence actual work on this Delivery Order within seven (7) days from the Date of Commencement will entitle the Agency to consider the A/E non-responsible. In this event, the Agency may withdraw this Delivery Order and terminate the Contract in accordance with the Contract Documents.

**AGENCY:**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**A/E:**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**COMPLETION CONFIRMATION BY AGENCY:**

**ACTUAL COMPLETION DATE:** \_\_\_\_\_

**CONFIRMED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Agency Representative)*

**TITLE:** \_\_\_\_\_

SE-648

MODIFICATION NO.: \_\_\_\_\_

**PROFESSIONAL SERVICES IDC DELIVERY ORDER MODIFICATION - LARGE CONTRACT**

**AGENCY:** \_\_\_\_\_

**DELIVERY ORDER PROJECT NAME:** \_\_\_\_\_

**DELIVERY ORDER PROJECT NUMBER:** \_\_\_\_\_

**IDC PROJECT NUMBER:** \_\_\_\_\_

**A/E:** \_\_\_\_\_

<u>COST INFORMATION:</u>	<u>DELIVERY ORDER</u>	<u>CONTRACT</u>
1. Maximum Total Amount of this IDC:		\$
2. Maximum Total Amount Allowed for Delivery Order:		
3. Current Amount of this Delivery Order:		
4. Amount of this Modification:		
5. Adjusted Amount of this Delivery Order	\$ 0.00	
6. IDC Total (Sum of all Delivery Orders, including this DO) Prior to this Modification:		\$
7. IDC Total (Sum of all Delivery Orders) Including this Modification:		\$ 0.00
8. Balance Remaining for this IDC:		\$ 0.00

**SCHEDULE MODIFICATION:** \_\_\_\_\_

**DESCRIPTION OF DELIVERY ORDER SCOPE MODIFICATION:** *(attach A/E's Proposal)* \_\_\_\_\_

**LIST OF MODIFICATION DOCUMENTS:** *(refer to attachments as necessary)* \_\_\_\_\_

The Agency and the A/E hereby agree, as indicated by the signatures below, to the revised scope of work identified in the Modification Documents listed above, the A/E's Cost Proposal dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and this Delivery Order Modification which shall be assigned to the Indefinite Delivery Contract identified above.

**AGENCY:**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**A/E**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**SE-650  
REQUEST TO AWARD MULTIPLE CONSTRUCTION SERVICES  
INDEFINITE DELIVERY CONTRACTS FOR THE SAME SERVICES**

**AGENCY:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**DESCRIPTION OF SERVICES:** *(Insert description of services by State license classification or subclassification, e.g. General Construction – Building)* \_\_\_\_\_

**NUMBER OF CONTRACTS TO BE AWARDED:** Agency hereby request permission to award more than five contracts for Indefinite Delivery of the above identified services. In support of this request, agency submits the following:

**1. Justification of Need:** *(Agency inserts description of why they have a need to award more than five Construction Services Indefinite Delivery Contracts for the above identified services)*

\_\_\_\_\_

**2. Means of Awarding Delivery Orders:** *(Describe means by which Agency will make awards of delivery orders)*

\_\_\_\_\_

**3. Minimum Number of Awards Necessary to Meet Agency Needs:** \_\_\_\_\_

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Agency Procurement Officer/Project Manager)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**Office of State Engineer Approval:** OSE hereby approves the Agency’s request to award multiple contracts for Indefinite Delivery of the above-identified services. Agency may only make the number of awards set forth above and must set forth the number of intended awards in the Invitation for Construction Services Indefinite Delivery Contract.

**APPROVED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(OSE Project Manager)*

**SUBMIT TO OSE:** One copy of this form.

# SE-655 INVITATION FOR CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACT

AGENCY/OWNER: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

DESCRIPTION OF PROJECT/SERVICES: \_\_\_\_\_

BID/SUBMITTAL DUE DATE: \_\_\_\_\_ CONSTRUCTION COST RANGE: \$ \_\_\_\_\_ to \$ \_\_\_\_\_ N/A

PROJECT DELIVERY METHOD: Design-Bid-Build

REPRESENTATIVE PROJECT NAME (if applicable): \_\_\_\_\_

REPRESENTATIVE PROJECT NUMBER (if applicable): \_\_\_\_\_

**BID SECURITY IS REQUIRED IN AN AMOUNT NOT LESS THAN 5% OF THE BASE BID.**

**CONTRACT INFORMATION**

- 1. The contract period of the awarded Indefinite Delivery Contract (IDC): \_\_\_\_\_
- 2. Maximum expenditures over the period of the awarded IDC: \$ \_\_\_\_\_
- 3. Maximum single project expenditure that will be allowed under the awarded IDC: \$ \_\_\_\_\_
- 4. Maximum number of IDC's Agency may award under this solicitation: \_\_\_\_\_

**BIDDING DOCUMENTS/PLANS MAY BE OBTAINED FROM:** \_\_\_\_\_

**PLAN DEPOSIT AMOUNT:** \$ \_\_\_\_\_ **IS DEPOSIT REFUNDABLE** Yes  No  N/A

Bidders must obtain Bidding Documents/Plans from the above listed source(s) to be listed as an official plan holder. Bidders that rely on copies obtained from any other source do so at their own risk. All written communications with official plan holders & bidders will be via email or website posting.

AGENCY PROJECT COORDINATOR: \_\_\_\_\_

EMAIL: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

PRE-BID CONFERENCE: Yes  No  MANDATORY ATTENDANCE: Yes  No

PRE-BID DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

PRE-BID PLACE: \_\_\_\_\_

BID DUE DATE: See Top of Page TIME: \_\_\_\_\_

BID OPENING PLACE: \_\_\_\_\_

**BID DELIVERY ADDRESSES:**

**HAND-DELIVERY:**

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MAIL SERVICE:**

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

*(OSE Project Manager)*

**INSTRUCTIONS TO THE AGENCY:**

- 1. Submit a copy of the completed SE-655 to the OSE Project Manager in MS Word format.
- 2. If the IDC is using Low Bid of a Representative Project as the method of award, submit Page 2 of the SE-655 to OSE.
- 3. OSE Project Manager will review and send approved copy to SCBO and the Agency

**SE-655  
INVITATION FOR CONSTRUCTION SERVICES IDC**

**ENTIRE FORM MUST BE COMPLETED PRIOR TO ADVERTISING PROJECT FOR BIDS**

REPRESENTATIVE PROJECT NAME: \_\_\_\_\_

REPRESENTATIVE STATE PROJECT NUMBER: \_\_\_\_\_

**1. BUDGET FOR REPRESENTATIVE PROJECT**

Total Approved Project Funding: ..... \$ \_\_\_\_\_

Construction Budget for the Representative Project: ..... \$ \_\_\_\_\_

Final Estimate of Construction Cost: ..... \$ \_\_\_\_\_

*(The Final Estimate of Construction Cost cannot be greater than the Agency's Construction Budget for the Representative Project.)*

**2. FLOOD HAZARD (Provide ALL of the following information for ALL projects, even if not in a flood hazard zone)**

Flood Map Information: Flood Zone: \_\_\_\_\_ *(A Floodplain Permit is required for A and V Zones)*

Community Number: \_\_\_\_\_ Panel Number: \_\_\_\_\_

Is the Project Site in a 100-Year Flood Plain? Yes  No

**3. STATUS OF PERMITS AND APPROVALS REQUIRED PRIOR TO BID ADVERTISEMENT**

*(Copies of all Permits and Approvals MUST be attached prior to advertisement.)*

FLOODPLAIN (OSE approval required, not subject to certification): \_\_\_\_\_

DHEC (List Individual Permits and/or Approvals): \_\_\_\_\_

Status of Each Permit/Approval: \_\_\_\_\_

SCDOT: \_\_\_\_\_

Status of Each Permit/Approval: \_\_\_\_\_

ZONING (Include Name of Local Authority): \_\_\_\_\_

Status of Permit/Approval: \_\_\_\_\_

OTHER (List Separately): \_\_\_\_\_

Status of Each Permit/Approval: \_\_\_\_\_

**AGENCY CERTIFICATION:**

I hereby certify that all of the information on this SE-655 is true and accurate and that the Agency has authorized, unencumbered funds available for obligation to a contract for the project to be advertised. I hereby request the Office of State Engineer to advertise the above-named Project.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
*(Signature of Agency Project Coordinator)*

PRINT NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Submit a copy of Pages 1 & 2 of the completed SE-655 to the OSE Project Manager in MS Word format.
2. If a Pre-Bid Conference is Mandatory, attach the Determination required by R. 19-445.2042(c).
3. Attach a copy of all permits and approvals listed in Section 3 of Page 2.
4. OSE Project Manager will review and send approved copy of Page 1 to SCBO and the Agency.
5. The signed copy of Page 1 MUST be included in the Bid Documents.



**SE-656****INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION SERVICES  
INDEFINITE DELIVERY CONTRACT**

AGENCY: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

DESCRIPTION OF CONSTRUCTION SERVICES (Include Contractor License category/subcategory): \_\_\_\_\_

The above named Agency hereby solicits bids for the Construction Services Indefinite Delivery Contract shown above. The Invitation for Bids includes the advertisement (SE-655), bid form, Notice of Intent to Award Indefinite Delivery Contract (SE-670), Construction Services Indefinite Delivery Contract (SE-680), General Conditions to Construction Services Indefinite Delivery Contract (SE-685), drawings and specifications (if applicable), and all addenda issued prior to bid opening, all of which are collectively referred to herein as the Solicitation Documents.

The Invitation for Bids is issued pursuant to SC Code § 11-35-3310 and the Manual for Planning and Execution of State Permanent Improvements, Part II (Manual).

**1. GENERAL INFORMATION**

- 1.1 Agency may award up to \_\_\_\_\_ Indefinite Delivery Contract(s) (IDC) under this solicitation provided the Agency receives an adequate number of responsive and responsible bids. In no event, will the Agency award more contracts than the number set forth in the previous sentence.
- 1.2 Work is to be performed at the following location(s): *(Insert location of work, e.g. a particular campus or campuses)*  
\_\_\_\_\_
- 1.3 The awarded IDC will be for a period not to exceed \_\_\_\_\_ *(may not exceed 2 years)*.
- 1.4 The awarded IDC allows the Agency to award a total amount of work not to exceed \$ \_\_\_\_\_
- 1.5 Work awarded under the IDC will be awarded using form SE-690, Construction Services IDC Delivery Order. Agency will provide IDC awardees the opportunity to bid on all Delivery Orders for the services set forth in this Invitation.
- 1.6 The Agency may only award one Delivery Order per project to the contractor. However, a Delivery Order may be amended. A Delivery Order may only be amended in writing signed by both parties using form SE-695, Construction Services Delivery Order Modification.
- 1.7 Work awarded under the IDC for a single project may not exceed \$ \_\_\_\_\_.
- 1.8 Projects and Delivery Orders may not be divided to avoid the limits set forth in 1.6 and 1.7 above.
- 1.9 *(Check the block for the provision applicable to this solicitation)*
- The minimum amount of work to be awarded under the IDC is \$ \_\_\_\_\_.
- Agency does not guarantee a minimum amount of work, nor does it guarantee the size or quantity of any work that is awarded under the IDC.
- 1.10 Bidders will agree to perform work for the advertised discipline in the following manner: *(Check one)*
- The cost of the work to the Agency will be determined using unit prices listed by the Bidder on its Bid Form. No other additions to the cost of the work will be permitted except the cost of Performance and Payment Bonds if required for specific Delivery Orders; or
- The cost of the work to the Agency will be determined by competitive bidding of each Delivery Order among all contractors having an active contract that the Agency awarded pursuant to this Invitation for Bids.
- 1.11 Bidders must be properly licensed in the discipline and the Group Classification to permit an award up to the maximum individual project award set forth in 1.7. Successful bidder(s) must maintain this license for the term of the contract.

**SE-656****INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION SERVICES  
INDEFINITE DELIVERY CONTRACT****2. SOLICITATION DOCUMENTS**

- 2.1 All persons obtaining Bidding Documents from the issuing office designated in the advertisement shall provide that office with Bidder's contact information to include the Bidder's name, telephone number, mailing address, and email address. Agency will send all addenda modifying the Solicitation Documents to all plan holders of record.
- 2.2 By submitting a bid, Bidder represents that it has read and understands the Solicitation Documents. Bidders are expected to examine the Solicitation Documents thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements. Failure to do so will be at the Bidder's risk. Bidder assumes responsibility for any patent ambiguity that Bidder does not bring to the Agency's attention prior to bid opening. Bidder shall make any requests for substitution, questions, clarifications, or interpretations of the bid documents in writing to the Agency at least 10 days before the Bid Date. The Agency will not give oral instruction prior to bidding nor will any oral instructions to bidders be binding on the Agency.
- 2.3 The Agency will make corrections, interpretations, or changes that modify the Solicitation Documents by written addendum. As provided in SC Regulation 19-445.2042(B), if this solicitation provides for a pre-bid conference, nothing stated at the pre-bid conference shall change the Solicitation Documents unless a change is made by written addendum.
- 2.4 The Agency will not issue addenda later than 120 hours before the date and time specified in the advertisement for receipt of Bids except to withdraw the Invitation for Bids or to extend the date for receipt of bids.
- 2.5 When the date for receipt of Bids is postponed and there is insufficient time to issue a written Addendum prior to the original Bid Date, Agency will notify prospective Bidders by telephone or other appropriate means with immediate follow up with a written Addendum. This Addendum will verify the postponement of the original Bid Date and establish a new Bid Date. The new Bid Date will be no earlier than the fifth (5th) calendar day after the date of issuance of the Addendum postponing the original Bid Date.

**3. BID PREPARATION**

- 3.1 Bidder shall submit its bid using the bid form included in the Solicitation Documents. Bidder shall fill in any blanks on the bid form legibly using an indelible medium. Bidder shall sign its bid in ink or other indelible media. Sums shall be expressed in figures.
- 3.2 Bidder shall not make stipulations or qualify its bid in any manner not permitted on the bid form. An incomplete Bid or information not requested that is written on or attached to the bid form that could be considered a qualification of the Bid, may be cause for rejection of the Bid.
- 3.3 Bid Security: *(Agency, check the block for the provision applicable to this solicitation)*
- Bidder is not required to submit Bid Security with its bid.
- Bid shall be accompanied by a Bid Security in an amount of not less than \_\_\_\_\_. The Bid Security shall be a bid bond or a certified cashier's check made payable to the Agency.
- 3.3.1 The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Failure of the Bidder to enter into a contract with the Agency, furnish such bonds if required, or to correct any Bid deficiencies allowed by law, shall cause bid security to be forfeited to the Agency as liquidated damages, not as a penalty.
- 3.3.2 If Bidder submits a bid bond as its bid security, the bond shall be written in the form of AIA Document A310, Bid Bond. The bid bond must be accompanied by a certified and current Power of Attorney for the attorney-in-fact who executes the bond on behalf of the surety company. The Bid Bond shall:
- a. Be issued by a Surety Company licensed to do business in South Carolina;
  - b. Be issued by a Surety Company having, at a minimum, a "Best Rating" of "A" as stated in the most current publication of "Best's Key Rating Guide, Property-Casualty," which company shows a financial strength rating of at least five (5) times the contract price.
  - c. Be enclosed in the bid envelope at the time of Bid Opening, either in paper copy or as an electronic bid bond authorization number provided on the Bid Form and issued by a firm or organization authorized by the Surety to receive, authenticate and issue binding electronic bid bonds on behalf the Surety.

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INDEFINITE DELIVERY CONTRACT**

- 3.3.3 By submitting a Bid Bond via an electronic bid bond authorization number on the Bid Form and signing the Bid Form, the Bidder certifies that an electronic bid bond has been executed by a Surety meeting the standards required by the Bidding Documents and the Bidder and Surety are firmly bound unto the State of South Carolina under the conditions provided in this Section 3.4.
- 3.3.4 The Agency will retain the Bid Security of those Bidders being considered for award until an IDC has been executed, all bids are rejected, or the time specified in the Solicitation Documents for holding bids open has elapsed, whichever is earlier.
- 3.4 Submission of Bids: The Bidders shall submit their Bid, Bid Security, if any, and any other documents required by the Solicitation Documents to be submitted with the Bid, in a sealed opaque envelope. Unless hand delivered by the Bidder, the sealed envelope must be addressed to the Agency's designated purchasing office as shown in the advertisement. The envelope shall be identified on the outside with the Project Name and Number, and the Bidder's name and address. If the Bidder sends its bid to the Agency by mail or special delivery service (UPS, Federal Express, etc.), the envelope should be labeled "BID ENCLOSED" on the face thereof. Bidders hand delivering their bids shall deliver bids to the place of the bid opening as shown in the advertisement. Whether or not Bidders attend the bid opening, they shall give their bids to the Agency's procurement officer or his/her designee as shown in the Advertisement prior to the time of the bid opening.
- 3.4.1 Each copy of the Bid submitted to the Agency shall be signed by the person(s) legally authorized to bind the Bidder to a contract. If the Bid is submitted by an agent of the Bidder, a current Power of Attorney certifying the agent's authority to bind the Bidder shall be attached to the bid.
- 3.4.2 The Agency must receive Bids at the designated location before the time and date specified in the Solicitation Documents for receipt of Bids. The Agency will return bids received after the time and date for receipt of Bids unopened.
- 3.4.3 The official time for receipt of Bids will be determined by reference to the clock designated by the Agency's Procurement Officer or his/her designee. The Procurement Officer conducting the Bid Opening will determine and announce that the deadline has arrived and no further Bids or bid modifications will be accepted. All Bids and bid modifications in the possession of the Procurement Officer at the time the announcement is completed will be timely, whether or not the bid envelope has been date/time stamped or otherwise marked by the Procurement Officer.
- 3.4.4 If an emergency or unanticipated event interrupts normal government processes so that Bids cannot be received at the government office designated for receipt of Bids by the exact time specified in the solicitation, the time specified for receipt of Bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Addendum may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Addendum will be issued to reschedule the conference.
- 4. CONDUCT OF BID OPENING AND CONSIDERATION OF BIDS**
- 4.1 Bid Opening:
- 4.1.1 Agency will publicly open and read aloud Bids received on time.
- 4.1.2 At Bid Opening, Agency will announce the date and location of the posting of the Notice of Intent to Award IDC.
- 4.1.3 Agency will send a copy of the final Bid Tabulation to all Bidders within ten (10) working days of the bid opening.
- 4.1.4 If Agency determines to make an award, Agency will, after posting a Notice of Intent to Award IDC, send a copy of the Notice to all Bidders.
- 4.1.5 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.
- 4.2 Agency intends to award contracts in the number set forth in the Solicitation Documents to the lowest responsive and responsible bidders.

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4.3 Bid Rejection: The Agency reserves the right to reject any and all bids.

4.3.1 Responsiveness:

4.3.1.1 The reasons for which the Agency will reject Bids include, but are not limited to:

- a. Failure by a Bidder to be represented at a Mandatory Pre-Bid Conference or site visit;
- b. Failure to deliver the Bid on time;
- c. Failure to comply with Bid Security requirements, except as expressly allowed by law;
- d. Listing an invalid electronic Bid Bond authorization number on the bid form;
- e. Showing any material modification(s) or exception(s) qualifying the Bid;
- f. Faxing a Bid directly to the Agency or their representative; or
- g. Failure to include a properly executed Power-of-Attorney with the Bid Bond.

4.3.1.2 The Agency may reject a Bid as nonresponsive if the prices bid are materially unbalanced between line items or sub line items. A Bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Agency, even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

4.3.2 Bidder Responsibility: Agency will make a determination of Bidder's responsibility before awarding a contract. Bidder shall provide all information and documentation requested by the Agency to support the Agency's evaluation of responsibility. Failure of Bidder to provide requested information is cause for the Agency, at its option, to determine the Bidder to be non-responsible.

## **5. TENDERING CONTRACT, CERTIFICATES OF INSURANCE, AND PERFORMANCE AND PAYMENT BONDS**

5.1 After expiration of the protest period, the Agency will tender a signed IDC to the successful Bidder(s). The Bidder(s) shall return the fully executed IDC to the Agency within seven (7) days thereafter. The Bidder(s) shall deliver the required proof of insurance and bonding capacity to the Agency not later than three (3) days following the date of execution of the IDC. Failure to deliver these documents as required shall entitle the Agency to consider the Bidder's failure as a refusal to enter into a contract in accordance with the terms and conditions of the Bidder's bid and to make claim on the bid security.

5.2 The IDC will be written on the Construction Services Indefinite Delivery Contract (SE-680).

5.3 After the IDC is fully executed, the Agency may award work to the successful Bidder(s) by issuing a Construction Services IDC Delivery Order (SE-690) as describe in the SE-680 and General Conditions to the SE-680 (SE-685).

## **6. BIDDER CERTIFICATIONS**

6.1 Certification of Independent Price Determination

**GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.**

(a) By submitting a bid, the Bidder certifies that—

- (1) The prices in this Bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Bidder or competitor relating to—
  - (i) Those prices;
  - (ii) The intention to submit a bid; or
  - (iii) The methods or factors used to calculate the prices offered.
- (2) The prices in this Bid have not been and will not be knowingly disclosed by the Bidder, directly or indirectly, to any other Bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

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- (3) No attempt has been made or will be made by the Bidder to induce any other concern to submit or not to submit a Bid for the purpose of restricting competition.
  - (b) Each signature on the Bid is considered to be a certification by the Signatory that the Signatory—
    - (1) Is the person in the Bidder’s organization responsible for determining the prices being offered in this Bid, and that the Signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or
    - (2) (i) Has been authorized, in writing, to act as agent for the Bidder’s principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term “principals” means the person(s) in the Bidder’s organization responsible for determining the prices offered in this Bid];
    - (ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and
    - (iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.
  - (c) If the Bidder deletes or modifies paragraph (a)(2) of this certification, the Bidder must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.
- 6.2 Drug Free Workplace: By submitting a bid, the Bidder certifies that Bidder will maintain a drug free workplace in accordance with the requirements of Title 44, Chapter 107 of South Carolina Code of Laws, as amended.
- 6.3 Certification Regarding Debarment and Other Responsibility Matters:
- (a) (1) By submitting an Bid, Bidder certifies, to the best of its knowledge and belief, that-
    - (i) Bidder and/or any of its Principals-
      - (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
      - (B) Have not, within a three-year period preceding this Bid, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of bids; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
      - (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.
    - (ii) Bidder has not, within a three-year period preceding this bid, had one or more contracts terminated for default by any public (Federal, state, or local) entity.
  - (2) “Principals,” for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).
  - (b) Bidder shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
  - (c) If Bidder is unable to certify the representations stated in paragraphs (a)(1), Bid must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Bidder’s responsibility. Failure of the Bidder to furnish additional information as requested by the Procurement Officer may render the Bidder nonresponsible.

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- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of a Bidder is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Bidder knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

- 6.4 Ethics Certification: By submitting a bid, the Bidder certifies that the Bidder has and will comply with, and has not, and will not; induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws (ethics act). The following statutes require special attention: SC Code § 8-13-700, regarding use of official position for financial gain; SC Code § 8-13-705, regarding gifts to influence action of public official; SC Code § 8-13-720, regarding offering money for advice or assistance of public official; SC Code §§ 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; SC Code § 8-13-775, prohibiting public official with economic interests from acting on contracts; SC Code § 8-13-790, regarding recovery of kickbacks; SC Code § 8-13-1150, regarding statements to be filed by consultants; and SC Code § 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by SC Code § 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed.
- 6.5 Restrictions Applicable to Bidders and Gifts: Violation of these restrictions may result in disqualification of your bid, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, ***bidder agrees not to discuss this procurement activity in any way with the Owner or its employees, agents or officials.*** All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, ***bidder agrees not to give anything to the Owner, any affiliated organizations, or the employees, agents or officials of either, prior to award.*** (c) Bidder acknowledges that the policy of the State is that a governmental body should not accept or solicit a gift, directly or indirectly, from a donor if the governmental body has reason to believe the donor has or is seeking to obtain contractual or other business or financial relationships with the governmental body. SC Regulation 19-445.2165(C) broadly defines the term donor.
- 6.6 Open Trade Representation (Jun 2015): By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

**7. MISCELLANEOUS PROVISIONS**

- 7.1 Non-Resident Taxpayer Registration Affidavit - Income Tax Withholding:

**IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**

Withholding Requirements for Payments to Nonresidents: SC Code § 12-8-550 requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: [www.sctax.org](http://www.sctax.org)

This notice is for informational purposes only. This Owner does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, SC 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898- 5383.

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PLEASE SEE THE “NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING” FORM (FORM NUMBER I-312) LOCATED AT:

<http://www.sctax.org/Forms+and+Instructions/withholding/default.htm>

- 7.2 Contractor Licensing: Contractors listed on the Bid Form who are required by the SC Code of Laws to be licensed, must be licensed at the time of bidding.
- 7.3 Submitting Confidential Information: For every document Bidder submits in response to or with regard to this solicitation or request, Bidder must separately mark with the word “CONFIDENTIAL” every page, or portion thereof, that Bidder contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in SC Code § 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in SC Code § 11-35-410. For every document Bidder submits in response to or with regard to this solicitation or request, Bidder must separately mark with the words “TRADE SECRET” every page, or portion thereof, that Bidder contends contains a trade secret as that term is defined by SC Code § 39-8-20 of the Trade Secrets Act. For every document Bidder submits in response to or with regard to this solicitation or request, Bidder must separately mark with the word “PROTECTED” every page, or portion thereof, that Bidder contends is protected by SC Code § 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire bid as confidential, trade secret, or protected! If your bid, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation, Bidder (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, & documents submitted during negotiations), unless the page is conspicuously marked “TRADE SECRET” or “CONFIDENTIAL” or “PROTECTED,” (2) agrees that any information not marked, as required by these bidding instructions, as a “TRADE SECRET” is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Bidder’s marking of documents, as required by these bidding instructions, as being either “CONFIDENTIAL” or “TRADE SECRET” or “PROTECTED”. By submitting a response, Bidder agrees to defend, indemnify & hold harmless the State of South Carolina, its officers & employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney’s fees, arising out of or resulting from the State withholding information that Bidder marked as “CONFIDENTIAL” or “TRADE SECRET” or “PROTECTED”.
- 7.4 Posting of Notice of Intent to Award IDC:  
Notice of Intent to Award Indefinite Delivery Contract, SE-670, will be posted at the following location:
- Room or Area of Posting: \_\_\_\_\_
- Building Where Posted: \_\_\_\_\_
- Address of Building: \_\_\_\_\_
- WEB site address (if applicable): \_\_\_\_\_

Posting date will be announced at bid opening. In addition to posting the notice, the Owner will promptly send all responsive bidders a copy of the notice of intent to award and the final bid tabulation

- 7.5 Protest of Solicitation or Award: Any prospective bidder, offeror, contractor or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten (10) days of the date notification of intent to award is posted in accordance with Title 11, Chapter 35, Section 4210 of the South Carolina Code of Laws. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the State Engineer within the time provided. Any protest must be addressed to the CPO, Office of State Engineer, and submitted in writing (a) by email to [protest-ose@mmo.sc.gov](mailto:protest-ose@mmo.sc.gov), (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the e-mail address from which you sent your protest.

**SE-656**

**INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION SERVICES  
INDEFINITE DELIVERY CONTRACT**

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- 7.6 Solicitation Information from Sources Other Than Official Source: South Carolina Business Opportunities (SCBO) is the official state government publication for State of South Carolina solicitations. Any information on State agency solicitations obtained from any other source is unofficial and any reliance placed on such information is at the bidder’s sole risk and is without recourse under the South Carolina Consolidated Procurement Code.
- 7.7 Installation Floater/Builder’s Risk Insurance: Agency insures its property through the South Carolina Insurance Reserve Fund. The Insurance Reserve Fund will not name a third party as an additional insured nor will it allow the Agency to waive subrogation. Pursuant to Section H of the SE-680, Agency may require Bidder to provide an installation floater or builder’s risk insurance when issuing a Delivery Order under the IDC.
- 7.8 Tax Credit for Subcontracting with Disadvantaged Small Businesses: Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in SC Code § 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, “Minority Business Credit.” A copy of the subcontractor’s certificate from the Governor’s Office of Small and Minority Business (OSMBA) is to be attached to the contractor’s income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review. Questions regarding subcontractor certification are to be referred to: SC Division of Small and minority Business Contracting and Certification (SMBCC).
- 7.9 Performance & Payment Bonds: Pursuant to SC Code § 11-35-3030, when the Agency awards a Delivery Order to the Indefinite Delivery Contractor in excess of \$50,000, the Contractor shall provide Performance and Payment Bonds each in the amount of 100% of the delivery order price. See Sections 3.18 & 3.19 of the SE-685 for more details.
- 7.10 Other Special Conditions:

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**SE-657  
CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACT  
UNIT PRICE BID FORM**

*Bidders shall submit bids on only Bid Form SE-657.*

**BID SUBMITTED BY:** \_\_\_\_\_  
(Bidder's Name)

**BID SUBMITTED TO:** \_\_\_\_\_  
(Owner's Name)

**FOR: PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**OFFER**

§ 1. In response to the Invitation for Construction Services Indefinite Delivery Contract and in compliance with the Instructions to Bidders for the above-named Project, the undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with the Owner on the terms included in the Bidding Documents, and to perform all Work as specified or indicated in the Bidding Documents, for the prices indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

§ 2. **Bid Security:** *(Owner check box that applies)*

Bid Security Not Required by this Solicitation.

Bid Security Required by this Solicitation: Pursuant to SC Code § 11-32-3030(1), Bidder has submitted Bid Security as follows in the amount and form required by the Bidding Documents:

**Bid Bond with Power of Attorney**                       **Electronic Bid Bond**                       **Cashier's Check**

*(Bidder check one)*

§ 3. Bidder acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into this Bid:

*(Bidder, check all that apply. Note that there may be more boxes than actual addenda. Do not check boxes that do not apply)*

**ADDENDA:**                       #1                       #2                       #3                       #4                       #5

§ 4. Bidder accepts all terms and conditions of the Invitation for Bids, including, without limitation, those dealing with the disposition of Bid Security. Bidder agrees that this Bid, including the Unit Prices, may not be revoked or withdrawn after the opening of bids, and shall remain open for acceptance for a period of **60** Days following the Bid Date, or for such longer period of time that Bidder may agree to in writing upon request of the Owner.

§ 5. Bidder herewith offers to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fees, permits, licenses and applicable taxes necessary to complete work awarded in the manner as specified and/or indicated in the Bidding Documents for the type work described below:

§ 6. **WORK DESCRIPTION** *(as indicated in the Bidding Documents and generally described as follows):* \_\_\_\_\_.

SE-657

## CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACT UNIT PRICE BID FORM

BIDDER agrees to complete work awarded in accordance with the Contract Documents for the following **UNIT PRICES**:

No.	ITEM	Estimated Bid Qty.	Unit of Measure	UNIT PRICE BID	EXTENDED VALUE <i>(Unit Price times Estimated Bid Qty.)</i>
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
<b>TOTAL BID</b> <i>(Total of all Extended Values)</i>					

**The lowest responsive and responsible Bidder will be the responsive and responsible Bidder submitting the lowest TOTAL BID price. In the event of mathematical errors, Unit Prices will control over extended values for purposes of determining the Total Bid**

Bidder acknowledges the following:

- 1) the estimated Bid Quantities are subject to increase or decrease depending on actual conditions encountered while performing the work of a Delivery Order;
- 2) payment will be made on actual quantities at the Unit Prices stated herein; and
- 3) actual quantities will be determined upon completion of the work, at which time adjustment will be made to the contract amount by direct increase or decrease, using the Unit Prices offered above.

**SE-657****CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACT  
UNIT PRICE BID FORM****§ 7. TIME OF CONTRACT PERFORMANCE AND LIQUIDATED DAMAGES**

Bidder agrees that the Date of Commencement of any contract awarded pursuant to the Invitation for Bids shall be established in the Agreement for Indefinite Delivery of Construction Services to be executed by the Owner and the successful Bidder. Bidder also agrees that individual Delivery Orders, if any, shall establish the Date of Commencement, the time to complete the Work included in the Delivery Order (or the completion date), and the amount, if any, the Owner shall retain from the compensation to be paid as Liquidated Damages for each calendar day the actual construction time required to complete the Work exceeds the specified or adjusted time for completion as provided in the Contract Documents.

**§ 9. AGREEMENTS**

- a) Bidder agrees that this Bid is subject to the requirements of the laws of the State of South Carolina.
- b) Bidder agrees that at any time prior to execution of the Construction Services Indefinite Delivery Contract for this Project, this Project may be canceled for the convenience of, and without cost to, the State.
- c) Bidder agrees that neither the State of South Carolina nor any of its agencies, employees or agents shall be responsible for any bid preparation costs, or any costs or charges of any type, should all bids be rejected or the Project canceled for any reason prior to execution of the Construction Services Indefinite Delivery Contract.

**§ 10. ELECTRONIC BID BOND**

By signing below, the Principal is affirming that the identified Electronic Bid Bond has been executed and that the Principal and Surety are firmly bound unto the State of South Carolina under the terms and conditions of the AIA Document A310, Bid Bond, included in the Bidding Documents.

**ELECTRONIC BID BOND NUMBER:** \_\_\_\_\_

**SIGNATURE AND TITLE:** \_\_\_\_\_

**SE-657**

**CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACT  
UNIT PRICE BID FORM**

**CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATION**

SC CONTRACTOR'S LICENSE NUMBER(S): \_\_\_\_\_

CLASSIFICATION(S) & LIMITS: \_\_\_\_\_

SUBCLASSIFICATION(S) & LIMITS: \_\_\_\_\_

**By signing this Bid, the person signing reaffirms all representation and certification made by both the person signing and the Bidder, including without limitation, those appearing in Article 2 of the Instructions to Bidders, is expressly incorporated by reference.**

**BIDDER'S LEGAL NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

# SE-659 CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACT REPRESENTATIVE PROJECT BID FORM

*Bidders shall submit bids on only Bid Form SE-659.*

**BID SUBMITTED BY:** \_\_\_\_\_  
(Bidder's Name)

**BID SUBMITTED TO:** \_\_\_\_\_  
(Owner's Name)

**FOR: REPRESENTATIVE PROJECT NAME:** \_\_\_\_\_

**REPRESENTATIVE PROJECT NUMBER:** \_\_\_\_\_

**IDC PROJECT NUMBER:** \_\_\_\_\_

**OFFER**

§ 1. In response to the Invitation for Indefinite Delivery of Construction Services and in compliance with the Instructions to Bidders for the above-named Project, the undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with the Owner on the terms included in the Bidding Documents, and to perform all Work as specified or indicated in the Bidding Documents, for the prices and within the time frames indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

§ 2. Pursuant to SC Code § 11-32-3030(1), Bidder has submitted Bid Security as follows in the amount and form required by the Bidding Documents:

- Bid Bond with Power of Attorney**
  - Electronic Bid Bond**
  - Cashier's Check**
- (Bidder check one)*

§ 3. Bidder acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into this Bid:

*(Bidder, check all that apply. Note that there may be more boxes than actual addenda. Do not check boxes that do not apply)*

**ADDENDA:**       #1       #2       #3       #4       #5

§ 4. Bidder accepts all terms and conditions of the Invitation for Bids, including, without limitation, those dealing with the disposition of Bid Security. Bidder agrees that this Bid may not be revoked or withdrawn after the opening of bids, and shall remain open for acceptance for a period of **60** Days following the Bid Date, or for such longer period of time that Bidder may agree to in writing upon request of the Owner.

§ 5. Bidder herewith offers to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fees, permits, licenses and applicable taxes necessary to complete the following items of construction work:

§ 6. **REPRESENTATIVE PROJECT WORK DESCRIPTION** *(as indicated in the Bidding Documents and generally described as follows):* \_\_\_\_\_

**\$** \_\_\_\_\_, which sum is hereafter called the Base Bid.

*(Bidder - insert Bid Amount for Representative Project on line above)*

The bid price shown above will be used to determine which bidders will receive award of an Indefinite Delivery Contract. The lowest responsive and responsible bidder will also receive a Delivery Order to perform the above described work at the price bid. Award and pricing of subsequent Delivery Orders shall be determined by competitive bidding between Indefinite Delivery Contractors receiving an award of an Indefinite Delivery Contract pursuant to this solicitation.

**SE-659  
CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACT  
REPRESENTATIVE PROJECT BID FORM**

**§ 6.1 UNIT PRICES FOR REPRESENTATIVE PROJECT:**

**BIDDER** offers for the Agency’s consideration and use, the following UNIT PRICES for use with the REPRESENTATIVE PROJECT. The UNIT PRICES offered by BIDDER indicate the amount to be added to or deducted from the REPRESENTATIVE PROJECT DELIVERY ORDER for each item-unit combination. UNIT PRICES include all costs to the Agency, including those for materials, labor, equipment, tools of trades and labor, fees, taxes, insurance, bonding, overhead, profit, etc. The Agency reserves the right to include or not to include any of the following UNIT PRICES in the Representative Project Delivery Order and to negotiate the UNIT PRICES with BIDDER.

**NOTE: These UNIT PRICES are ONLY for the Representative Project Delivery Order and Bidder is not required to honor these on future Deliver Orders under this IDC.**

<b>NO.</b>	<b>ITEM</b>	<b>UNIT OF MEASURE</b>	<b>ADD</b>	<b>DEDUCT</b>
<u>1.</u>	_____	_____	\$ _____	\$ _____
<u>2.</u>	_____	_____	\$ _____	\$ _____
<u>3.</u>	_____	_____	\$ _____	\$ _____
<u>4.</u>	_____	_____	\$ _____	\$ _____
<u>5.</u>	_____	_____	\$ _____	\$ _____
<u>6.</u>	_____	_____	\$ _____	\$ _____

**§ 7. TIME OF CONTRACT PERFORMANCE AND LIQUIDATED DAMAGES – INDEFINITE DELIVERY CONTRACT**

Bidder agrees that the Date of Commencement of any contract awarded pursuant to the Invitation for Bids shall be established in the Agreement for Indefinite Delivery of Construction Services to be executed by the Owner and the successful Bidder. Bidder also agrees that individual Delivery Orders, if any, shall establish the Date of Commencement, the time to complete the Work included in the Delivery Order (or the completion date), and the amount, if any, the Owner shall retain from the compensation to be paid as Liquidated Damages for each calendar day the actual construction time required to complete the Work exceeds the specified or adjusted time for completion as provided in the Contract Documents.

**§ 7.1 TIME OF CONTRACT PERFORMANCE AND LIQUIDATED DAMAGES - REPRESENTATIVE PROJECT**

a) **CONTRACT TIME:** Bidder agrees that the Date of Commencement of the Work shall be established in the Delivery Order for this Work to be issued by the Owner. Bidder agrees to substantially complete the Work within \_\_\_\_\_ Calendar Days from the Date of Commencement, subject to adjustments as provided in the Contract Documents.

b) **LIQUIDATED DAMAGES:** Bidder further agrees that from the compensation to be paid, the Owner shall retain as Liquidated Damages the amount of \$\_\_\_\_\_ for each Calendar Day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted time for Substantial Completion as provided in the Contract Documents. This amount is intended by the parties as the predetermined measure of compensation for actual damages, not as a penalty for nonperformance.

**SE-659  
CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACT  
REPRESENTATIVE PROJECT BID FORM**

**§ 8. AGREEMENTS**

- a) Bidder agrees that this bid is subject to the requirements of the laws of the State of South Carolina.
- b) Bidder agrees that at any time prior to execution of the Construction Services Indefinite Delivery Contract for this Project, this Project may be canceled for the convenience of, and without cost to, the State.
- c) Bidder agrees that neither the State of South Carolina nor any of its agencies, employees or agents shall be responsible for any bid preparation costs, or any costs or charges of any type, should all bids be rejected or the Project canceled for any reason prior to execution of the Construction Services Indefinite Delivery Contract.

**§ 9. ELECTRONIC BID BOND**

By signing below, the Principal is affirming that the identified electronic bid bond has been executed and that the Principal and Surety are firmly bound unto the State of South Carolina under the terms and conditions of the AIA Document A310, Bid Bond, included in the Bidding Documents.

**ELECTRONIC BID BOND NUMBER:** \_\_\_\_\_

**SIGNATURE AND TITLE:** \_\_\_\_\_

**CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATION**

**SC Contractor's License Number(s):** \_\_\_\_\_

**Classification(s) & Limits:** \_\_\_\_\_

**Subclassification(s) & Limits:** \_\_\_\_\_

**By signing this Bid, the person signing reaffirms all representation and certification made by both the person signing and the Bidder, including without limitation, those appearing in Article 2 of the Instructions to Bidders, is expressly incorporated by reference.**

**BIDDER'S LEGAL NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**SE-660  
REQUEST FOR CONCURRENCE IN POSTING NOTICE OF INTENT TO AWARD  
INDEFINITE DELIVERY CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

The above named Agency hereby requests approval from the Office of State Engineer (OSE) to post Notice of Intent to Award a contract to the Contractor(s) named based on the amount(s) stated below. If the Agency does not receive written objection from OSE within 5 business days after OSE's receipt of this Request and the documentation required below, the Agency may post the attached Notice of Intent to Award at the location stated in the Instructions to Bidders.

<u>INTENDED AWARDEE (Contractor)</u>	<u>BID AMOUNT</u>
1. _____ - A	\$ _____
2. _____ - B	\$ _____
3. _____ - C	\$ _____
4. _____ - D	\$ _____
5. _____ - E	\$ _____

**DATE BIDS WERE OPENED:** \_\_\_\_\_

**REMARKS:** \_\_\_\_\_

**AGENCY CERTIFICATION AND REQUEST**

I hereby certify that the Agency has conducted this solicitation in accordance with the requirements of the SC Consolidated Procurement Code and the *Manual for Planning and Execution of State Permanent Improvements, Part II*. I further certify that the Agency has authorized, unencumbered funds available for obligation to this contract. I hereby request the approval of the Office of State Engineer to post a Notice of Intent to Award a contract(s) for construction services in support of the above-named Project.

**AGENCY SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**APPROVED**

**OSE PROJECT MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**NOT APPROVED**

**OSE PROJECT MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**REASONS FOR DISAPPROVAL OF REQUEST:** \_\_\_\_\_

**SUBMIT THE FOLLOWING DOCUMENTS TO OSE:**

1. SE-660.
2. Copy of all intended awardee's Bid Forms, including Bid Security with Power of Attorney.
3. If any other bidder submitted a lower bid, but was determined to be non-responsive or non-responsible, a copy of:
  - a. That Bidder's Bid Form, and
  - b. A statement setting forth the basis for disqualifying that bidder.
4. Copy of Bid Tabulation.
5. Copy of proposed Notice of Intent to Award (SE-670).
6. Contractor licenses, if applicable, for the intended awardees and their listed subcontractors (*may be obtained from LLR's website at <https://verify.llronline.com/LicLookup/LookupMain.aspx>*)
7. Copy of the Construction Services Indefinite Delivery Contract (SE-680) if different from that in the Bid Documents previously submitted to OSE. (*This only occurs when the agency has statutorily authorized negotiations after an unsuccessful competitive sealed bid. See SC Code § 11-35-3020(d)(i).*)



**SE-670**

**NOTICE OF INTENT TO AWARD - INDEFINITE DELIVERY CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**POSTING DATE:** \_\_\_\_\_

**TO ALL BIDDERS:**

Unless stayed by protest or canceled, the Agency intends to enter into a contract as noted below. The successful bid(s) will be accepted and the contract formed by execution of the contract documents. All bid bonds remain in effect for the bid acceptance period as provided in Section 4 of the Bid Form, except as otherwise provided in the Instructions to Bidders.

	<u>NAME OF BIDDER</u>	<u>BID AMOUNT</u>
1.	_____ - A	\$ _____
2.	_____ - B	\$ _____
3.	_____ - C	\$ _____
4.	_____ - D	\$ _____
5.	_____ - E	\$ _____

**DATE BIDS WERE OPENED:** \_\_\_\_\_

**REMARKS** *(explain any negotiations that resulted in a change in any Bid amounts):* \_\_\_\_\_

Contractor should not incur any costs associated with the contract prior to receipt of a contract from the Agency for execution. Contractor should not perform any work prior to (1) delivering to the Agency both certificates of insurance and Performance and Payment Bonds meeting the requirements of the solicitation; and (2) receipt of the Agency's written Notice to Proceed. The State assumes no liability for any expenses incurred by the Contractor prior to issuance of a Notice to Proceed, other than the Contractor's non-reimbursable costs incurred in providing such bonds.

**RIGHT TO PROTEST (SC Code § 11-35-4210)**

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this contract may protest within ten (10) days of the date the Notice of Intent to Award is posted. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided.

PROTEST - CPO ADDRESS - OSE: Any protest must be addressed to the Chief Procurement Officer for Construction, Office of State Engineer, and submitted in writing (a) by email to: [protest-ose@mno.sc.gov](mailto:protest-ose@mno.sc.gov), (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the e-mail address from which you sent your protest.

\_\_\_\_\_  
*(Agency Procurement Officer Signature)*

\_\_\_\_\_  
*(Print or Type Name)*

**INSTRUCTIONS TO THE AGENCY:**

1. Post a copy of this form at the location specified by the Instructions to Bidders and announced at the Bid Opening.
2. Send a copy of this form and the final Bid Tabulation to all responsive Bidders and OSE.
3. If the Agency selects more than 5 firms, use additional SE-670's as needed.

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# **TECHNICAL SPECIFICATIONS**

2018 Edition

**SE-680**

**CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**AGENCY PROCUREMENT OFFICER:** \_\_\_\_\_

THIS AGREEMENT is made this the \_\_\_\_ day of \_\_\_\_ in the year Two Thousand \_\_\_\_ by and between

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

hereinafter called the “Agency”, and

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

hereinafter called the “Contractor.”

WHEREAS, the Agency solicited bids for construction services, for the work description below, for projects to be determined, on an as-needed basis:

**WORK DESCRIPTION:** \_\_\_\_\_

WHEREAS, Contractor submitted a successful bid to provide the services described above on an as-needed basis.

NOWHEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Agency and Contractor (hereinafter jointly referred to as the “parties”) agree as follows:

**A. Contract Term:**

1. The effective date of this agreement shall commence as of the date at the top of this page and the term shall extend until \_\_\_\_, 20\_\_ (not to exceed two (2) years). The parties may not renew this agreement for an additional term nor may they extend the duration of this agreement by amendment or waiver.
2. Contractor proposals accepted by the Agency within the time limits of the contract may be completed by the Contractor even though the completion date may extend beyond the term of the contract.

**B. Contract Documents:**

1. Documents forming a part of the contract are:
  - a. This Agreement for Indefinite Delivery of Construction Services;
  - b. Invitation for Construction Services Indefinite Delivery Contract dated \_\_\_\_;
  - c. General Conditions to Construction Services Indefinite Delivery Contract (SE-685);
  - d. Contractors completed IDC Bid Form SE-6\_\_\_\_;
  - e. Agency requests for proposals for construction services made pursuant to this contract;
  - f. Proposals issued by the contractor in response to the Agency’s request for proposals;
  - g. Delivery Orders (SE-690) and Modifications (SE-695) issued by the Agency pursuant to this contract;
  - h. Project Manual issued with the Invitation for Construction Services Indefinite Delivery Contract, if any;
  - i. Addenda to the Invitation for Construction Services Indefinite Delivery Contract issued prior to the date of bid opening;
  - j. The following other documents:  
\_\_\_\_\_  
\_\_\_\_\_
2. The contract is the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, whether written or oral.

**C. The Work:**

1. The Agency will request proposals for construction services on an as-needed basis. The scope of services will be within the general description of work set forth above and within the expenditure limits set forth in the Invitation for Construction Services Indefinite Delivery Contract. The Agency will award work by issuing the contractor a Delivery Order using the Construction Services IDC Delivery Order (SE-690). The method for requesting proposals and awarding Delivery Orders shall be in accordance with the procedures set forth in Part 4 of the General Conditions.
2. The Contractor shall not incur any expense chargeable to the Agency on or about the work of any Delivery Order assigned to this contract until the Delivery Order has been awarded and fully executed by both the Agency and the Contractor.

**D. Payment:**

Contractor shall make application for payment for work performed under Delivery Orders and the Agency shall make payment in the form and manner set forth in Part 4.3 of the General Conditions.

**E. Suspension or Termination:**

The parties may terminate the contract only in the manner provided in Part 9 of the General Conditions.

**F. Dispute Resolution:**

The parties shall resolve all disputes in the manner provided in Part 5 of the General Conditions.

**G. Representatives:**

1. Agency's Representative:  
Agency designates the individual listed below as its Representative, which individual has the authority and responsibility set forth in Part 2.2 of the General Conditions:

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

2. Contractor's representative:  
Contractor designates the individual listed below as its Contractor's Representative, which individual has the authority and responsibility set forth in Part 3.2 of the General Conditions:

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

3. Neither the Agency nor the Contractor shall change their representatives without ten days written notice to the other party.

**H. Insurance and Performance & Payment Bonds:**

The Contractor shall purchase and maintain insurance and provide Performance and Payment Bonds as set forth in Parts 3.18 and 3.19 of the General Conditions.

**AGENCY:**

**CONTRACTOR:**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**SE-685****GENERAL CONDITIONS TO CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACT****AGENCY:** \_\_\_\_\_**PROJECT NAME:** \_\_\_\_\_**PROJECT NUMBER:** \_\_\_\_\_**CONTRACTOR:** \_\_\_\_\_**1. GENERAL INFORMATION**

- 1.1 Contract Documents: The Contract Documents are identified in the Construction Services Indefinite Delivery Contract (the "Contract"). The Contract can only be modified by written agreement signed by both the Agency and the Contractor. The Contract Documents do not create a contractual relationship between the Contractor and any separate Contractor having a contract with the Agency; between the Agency and any subcontractor to the Contractor of any tier; or between any persons or entities other than the Agency and the Contractor.
- 1.2 Delivery Order: A Delivery Order is a written order issued by the Agency to the Contractor under the terms and conditions of the Contract, directing the Contractor to perform the work described therein. The Agency shall issue the Delivery Order on the Construction Services IDC Delivery Order (SE-690).
- 1.3 Contractor shall not incur any expense chargeable to the Agency on or about the work of any Delivery Order assigned to this contract until the Delivery Order has been awarded and fully executed by both the Agency and the Contractor.
- 1.4 The Contract is subject to strict expenditure and term limits set forth in SC Code § 11-35-3310 and further explained in the Manual for Planning and Execution of State Permanent Improvements, Part II (the "Manual"). Any modification to the Contract purporting to exceed these strict limits are null and void. The limits applicable to this Contract are set forth in Part I of the Invitation for Construction Services - Indefinite Delivery Contract.
- 1.5 The Work: As used herein, the "Work" means any work required of or performed by the Contractor pursuant to each and every Delivery Order issued by the Agency under this Contract.

**2. AGENCY**

- 2.1 The term "Agency" means the Agency or the Agency's Representative.
- 2.2 Representative: The Agency's representative designated in Part G(1) of the Construction Services Indefinite Delivery Contract (SE-680) shall have the authority to bind the Agency with respect to all matters regarding the Contract and requiring the Agency's approval or authorization.
- 2.3 Information to the Contractor: The Agency shall furnish, with reasonable promptness, information requested by the Contractor that is necessary for the performance of the Contract Services and under the Agency's control. Any information or documentation provided by the Agency to the Contractor relating to the Project or Site is provided only for the convenience of the Contractor. The Agency makes no representation or warranty to as to the sufficiency, completeness, or accuracy of such information.
- 2.4 Utility Access and Use:  
 If this box is checked, the Agency shall allow the Contractor to use reasonable quantities of water and electricity for construction purposes without charge, as long as these utilities are available and in close proximity to the Work area. Contractor shall be conscientious in controlling excessive or frivolous use of the utilities or the Agency may charge the Contractor for wasteful usage.
- 2.5 Sanitary Facilities: *(Agency, check box that applies to this contract)*  
 The Contractor may use those sanitary facilities designated by the Agency in each Delivery Order as available for use.  
 The Contractor may not use the Agency's sanitary facilities. The Contractor shall provide sanitary facilities at the job site and maintain same in a clean and sanitary condition for the use of its employees and employees of its subcontractors for the duration of construction. The sanitary facilities shall conform to the requirements of the South Carolina Department of Health and Environmental Control.
- 2.6 Permits, Assessments, and Easements: The Agency shall secure and pay for all building permits, zoning permits, assessments, and easements except as required by any Delivery Order issued under the terms of the contract

- 2.7 Agency's Architect-Engineer (A/E): The Agency may retain an independent A/E to prepare design documents for the work of a specific Delivery Order. In such event, the A/E will be a representative of the Agency during the performance of such work through final completion of such work. In the absence of an independent A/E, the Agency will assign one of its employees to act as A/E for the work of a particular Delivery Order. The Contractor shall cooperate with the A/E in the performance of its duties. The A/E will perform the following duties:
- a. The A/E will make periodic visits to the site during contract administration to become familiar with the progress of the work and to determine if the work is generally progressing in accordance with the contract documents.
  - b. The A/E will make recommendations to the Agency as to acceptance or rejection of the work and, upon the Agency's concurrence, communicate the acceptance or rejection of the work to the Contractor.
  - c. The A/E will review and approve or reject shop drawings and samples submitted by the Contractor showing details/finishes of the work proposed to be installed.
  - d. The decision of the A/E in all matters relating to design and interpretation of contract documents shall, subject to the provisions of Part 5 (Dispute Resolution) be final.
  - e. The A/E will not be responsible for construction means, methods, techniques, procedures and safety measures in the performance of the work nor acts or omissions of the Contractor, subcontractors or any other entity performing work on the site.
  - f. The A/E will review requests for payment, and make recommendations to the Agency for approval or rejection of all or part of the request.
  - g. The A/E will prepare change orders or change directives for review and approval by the Agency.
- 2.8 Construction by Agency: The Agency may do work with its own forces or award separate contracts for work on the same project as may be awarded by Delivery Order under this contract. The Contractor shall allow access to the site by the Agency's work force or separate Contractor(s), and shall cooperate in coordinating the progress of the work with the Agency. The Agency shall have the responsibility to coordinate the activities of the various Contractors working at the project location.

### **3. CONTRACTOR**

- 3.1 The term "Contractor" means the Contractor or the Contractor's Representative.
- 3.2 Representative: The Contractor's representative designated in Part G(2) of the Construction Services Indefinite Delivery Contract (SE-680) shall have the authority to bind the Contractor with respect to all matters regarding the Contract and requiring the Contractor's approval or authorization.
- 3.3 Supervision and Performance of the Work: The Contractor shall supervise, perform, and direct the Work, using the professional skill, care, and attention reasonably required for similar projects. The Contractor shall be solely responsible for and have control over means, methods, techniques, sequences, and procedures and for coordinating the Work, unless the Contract Documents give other specific instructions concerning these matters. The Contractor agrees to faithfully and fully perform the terms of this Contract, and any Delivery Order issued under this Contract and shall complete the Work in accordance with the Contract Documents and deliver the Work to the Agency free and clear of all liens and claims. The Contractor shall, at all times during the progress the Work, employ enough skilled workers and have on hand and maintain an adequate supply of materials and equipment to complete the Work in accordance with the construction schedules agreed to in applicable Delivery Orders.
- 3.4 Employee Discipline: The Contractor shall enforce discipline and good order among the Contractor's and subcontractors' employees, and other persons carrying out the Work. Contractor shall be responsible to the Agency for acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.
- 3.5 Safety: The Contractor shall comply with all federal and state work site safety requirements and shall be responsible for initiating, maintaining, and supervising reasonable safety precautions and programs in connection with the performance of the Contract Services. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable and appropriate protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein; and (3) other property at the site of the Work or adjacent thereto.
- 3.6 Waste Materials and Rubbish: The Contractor shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by the Work. Upon Final Acceptance of the Work, the Contractor shall, to the Agency's satisfaction, remove from and about the site, all waste materials, rubbish, surplus material, and Contractor's tools, equipment, machinery.

- 3.7 Recycling: The Contractor shall give preference to the use of products containing recycled content in the performance of the Work. The Contractor shall cooperate with any recycling program established for the site of the work of any Delivery Order or available through the state or a political subdivision of the state.
- 3.8 Access to the Work: The Contractor shall provide the Agency with unrestricted access to the Work in preparation and progress wherever located.
- 3.9 Use of Site: The Contractor shall confine its operations to the portions of the site identified in each Delivery Order or otherwise approved by the Agency, and shall not unreasonably encumber the portions of the site used for the Work with materials, equipment, or similar items. The Contractor and all subcontractors shall use only such entrances to the Site as are designated by the Agency. During occupied hours, Contractor shall limit construction operations to methods and procedures that do not adversely affect the environment of occupied spaces within the Site, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting.
- 3.10 Correction of the Work:
- 3.10.1 The Agency shall have the right and authority to reject Work that does not conform to the Contract Documents. The Contractor shall promptly correct Work rejected by the Agency for failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. The provisions of this Section 3.10 apply to Work done by subcontractors as well as to Work done by direct employees of the Contractor.
- 3.10.2 If the Contractor fails to correct the Work, or any portion thereof, that is not in accordance with the requirements of the Contract Documents or fails to carry out Work or provide information in accordance with the Contract Documents, the Agency may make written demand upon the Contractor to cure its defaults within seven days. Within seven days after receipt of the Agency's demand, the Contractor shall cure its defaults unless the default is such that it is not capable of cure within seven days. If the default is such that it is not capable of cure within seven days, the Contractor shall reach an agreement with the Agency on a plan to cure its defaults within five days after receipt of the Agency's demand. The Contractor shall commence and diligently and continuously pursue the cure of such defaults in accordance with the agreed plan. If the Contractor fails to cure its defaults as heretofore provided, the Agency may order the Contractor, in writing, to stop the Work, or any portion thereof, until the Contractor has eliminated the cause for such order or has provided the Agency with a plan for corrective action acceptable to the Agency. The right of the Agency to stop the Work shall not give rise to a duty on the part of the Agency to exercise this right for the benefit of the Contractor or any other person or entity.
- 3.10.3 Correction after Substantial Completion: If, within one year after the date of Substantial Completion of the Work, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Agency to do so. The Contractor's obligation set forth in this Part 3.10.3 is in addition to the Contractor's obligations under Part 3.12.
- 3.10.4 Nothing contained in this Part 3.10 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of such time period as described in this Section 3.10 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- 3.11 Manufacturers' Warranties: At Final Acceptance of the Work, the Contractor shall furnish the Agency two original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work (collectively referred to as "*Manufacturers' Warranties*"), completed in favor of the Agency. These Manufacturers' Warranties are in addition to and not in lieu of the Contractor's warranty set forth in Part 3.12, and the Agency is entitled to look to the Contractor for remedy in all cases where the Contractor's warranty applies regardless of whether a Manufacturer's Warranty also applies. The Agency shall acknowledge receipt of the sets of Manufacturers' Warranties on the set itself, and the Contractor shall cause six (6) copies of an acknowledged set to be made and furnished to the Agency. All Manufacturers' Warranties will be for applicable periods and contain terms not less favorable to the Agency than those terms that are standard for the applicable industries, and will either be issued in the first instance in the name of and for benefit of the Agency, or be in a freely assignable form and be assigned to the Agency without limitations.



- 3.12 **Contractor Warranty:** The Contractor warrants to the Agency that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from faults and defects not inherent in the quality required or permitted, that the materials, equipment and Work will conform with the requirements of the Contract Documents, and that the Work will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to the Agency. The Contractor's warranty excludes remedy for damage or defect to the extent caused by (i) abuse by anyone other than the Contractor or those for whose acts the Contractor is responsible, (ii) modifications not approved or executed by the Contractor or subcontractors, (iii) improper or insufficient maintenance or operation not the fault of the Contractor or those for whose acts the Contractor is responsible, or (iv) normal wear and tear under normal usage. If required by the Agency, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment and the recommended maintenance thereto to meet the requirements of this Part.
- 3.13 After completion of the Work but no later than the date of Substantial Completion, the Contractor shall submit operation and maintenance manuals, recommended spare parts lists, and copies of all warranties to the Agency. As-Built drawings shall be submitted no later than the Final Completion Date.
- 3.14 **Compliance with Law:**
- 3.14.1 The Contractor shall comply with and give all notices required by federal, state, county, and municipal laws, ordinances, regulations, and orders bearing on the performance by the Contractor of the duties or responsibilities under this Contract.
- 3.14.2 The Contractor shall promptly remedy any violation of any such law, ordinance, rule, regulation, or order that comes to its attention to the extent that the same results from its performance of the Work. The Contractor shall promptly, and in no event later than the close of the next business day following receipt, give notice to the Agency by telephone, with confirmation in writing, of receipt by the Contractor of any information relating to violations of laws, ordinances, rules, regulations, and orders.
- 3.15 **Subcontractors:**
- 3.15.1 The Contractor shall furnish in writing to the Agency for its approval the names of the subcontractors to whom the Contractor plans to award any portion of the Contract Services.
- 3.15.2 Contracts between the Contractor and subcontractors shall require each subcontractor, to the extent of the Contract Services to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Agency.
- 3.15.3 The Contractor shall be responsible to the Agency for acts and omissions of the subcontractors, their agents and employees, and any other persons performing portions of the Contract Services, to the same extent as the acts or omissions of the Contractor hereunder.
- 3.16 **Publicity:** Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of agencies, without the prior written approval of the Agency.
- 3.17 **Indemnification**
- 3.17.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Agency and the Agency's agents and employees from and against claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees, arising out of or resulting from performance of the work of a Delivery Order, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused by negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
- 3.17.2 In claims against any person or entity indemnified under Part 3.17.1 by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Part 3.17 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

## 3.18 Insurance

3.18.1 Commercial General Liability, Business Automobile Liability, and Worker's Compensation: The Contractor shall purchase from and maintain, in a company or companies lawfully authorized to do business in South Carolina, such insurance as will protect Contractor from claims set forth below, which may arise out of or result from Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (a) claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- (b) claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- (d) claims for damages insured by usual personal injury liability coverage;
- (e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- (g) claims for bodily injury or property damage arising out of completed operations; and
- (h) claims involving contractual liability insurance applicable to the Contractor's obligations under Part 3.17, Indemnification.

3.18.1.1 The insurance required by Part 3.18.1 shall be written for not less than the limits of liability specified below or required by law, whichever is greater. Coverage shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work set forth in Part 3.10 or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

- (a) **COMMERCIAL GENERAL LIABILITY:**
  - (1) General Aggregate (per project)..... \$1,000,000
  - (2) Products/Completed Operations..... \$1,000,000
  - (3) Personal and Advertising Injury..... \$1,000,000
  - (4) Each Occurrence ..... \$1,000,000
  - (5) Fire Damage (Any one fire) ..... \$50,000
  - (6) Medical Expense (Any one person) ..... \$5,000
- (b) **BUSINESS AUTO LIABILITY (including All Owned, Non-owned, and Hired Vehicles):**
  - (1) Combined Single Limit ..... \$1,000,000 OR
  - (2) Bodily Injury & Property Damage (each) ..... \$750,000
- (c) **WORKER'S COMPENSATION:**
  - (1) State Statutory
  - (2) Employers Liability..... \$100,000 per Acc.  
\$500,000 Disease, Policy Limit  
\$100,000 Disease, Each Employee

In lieu of separate insurance policies for Commercial General Liability, Business Auto Liability, and Employers Liability, the Contractor may provide an umbrella policy meeting or exceeding all coverage requirements set forth in this Part 3.18.1. The umbrella policy limits shall not be less than \$5,000,000.

3.18.1.2 Prior to commencement of the Work, and thereafter upon replacement of each required policy of insurance, Contractor shall provide to the Agency a written endorsement to the Contractor's general liability insurance policy that:

- (i) names the Agency as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations;

- (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless all additional insured have been given at least ten (10) days prior written notice of cancellation for non-payment of premiums and thirty (30) days prior written notice of cancellation for any other reason; and
    - (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the Agency as secondary and noncontributory.
  - 3.18.1.3 Before commencement of the Work, and thereafter upon renewal or replacement of each required policy of insurance, Contractor shall provide to the Agency a signed, original certificate of liability insurance (ACORD 25). Consistent with this Part 3.18.1, the certificate shall identify the types of insurance, state the limits of liability for each type of coverage, name the Agency as Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. Both the certificates and the endorsements must be received directly from either the Contractor's insurance agent or the insurance company. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, naming the Agency as an additional insured for claims made under the Contractor's completed operations, and otherwise meeting the above requirements, shall be submitted with the Contractor's final request for payment for the Work and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Part 3.18.1. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.
  - 3.18.1.4 A failure by the Agency either (i) to demand a certificate of insurance or written endorsement required by Part 3.18.1, or (ii) to reject a certificate or endorsement on the grounds that it fails to comply with Part 3.18.1, shall not be considered a waiver of Contractor's obligations to obtain the required insurance.
- 3.18.2 Property Insurance:
- 3.18.2.1 Builder's Risk Insurance: Unless otherwise specified in the Delivery Order, at the time of execution of a Delivery Order and before commencing work under that Delivery Order, Contractor shall purchase property insurance written on a builder's risk "all risk" or equivalent policy form on a replacement cost basis. Contractor shall maintain such property insurance until the Agency has made final payment for the work of the Delivery Order or until no person or entity other than the Agency has an insurable interest in the property required by this Paragraph 3.18.2 to be covered, whichever is later. This insurance shall include and be in an amount sufficient to cover at all times during the performance of the work of the Delivery Order, the interests of the Contractor, Subcontractors and Sub-subcontractors in the Delivery Order Project. The property insurance shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.
  - 3.18.2.2 Equipment Breakdown Insurance: In the event the Contractor installs and runs and/or operates (whether for testing or other purposes) heating, air conditioning, and electrical machinery and equipment, the Contractor shall purchase and maintain equipment breakdown (boiler and machinery) insurance, which shall specifically cover such objects during installation and until final acceptance by the Agency. This insurance shall include interests of the Agency, Contractor, and subcontractors at any tier in the Work, and the Agency and Contractor shall both be named insured.
  - 3.18.2.3 Before an exposure to loss may occur, the Contractor shall file with the Agency a copy of each policy that includes insurance coverage required by this Part 3.18.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.
  - 3.18.2.4 Waiver of Subrogation: The Agency and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent the property insurance provided by the Contractor pursuant to this Section 3.18.2 covers and pays for the damage, except such rights as they have to proceeds of such insurance held by the Contractor. The Agency or Contractor, as appropriate, shall require of the subcontractors, sub-subcontractors, agents and employees, each of the other, by appropriate written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of

indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

- 3.19 Performance and Payment Bonds: Prior to beginning work on a Delivery Order, the Contractor shall deliver to the Agency a Performance Bond and a Labor & Material Payment Bond if the Contractor's agreed upon compensation for the Work of the Delivery Order exceeds \$50,000 or the Agency requests such bonds. Each bond shall be in the amount of 100% of the amount of the Delivery Order. The Contractor's Performance Bond shall be in the form of the SE-355, Performance Bond, and the Labor & Material Payment Bond shall be in the form of the SE-357, Labor & Material Payment Bond. The surety company providing the Bonds shall have, at a minimum, a "Best Rating" of "A" as stated in the most current publication of "Best's Key Rating Guide, Property - Casualty." Contractor's failure to provide bonds as herein required shall be an event of default justifying the Agency, in its sole discretion, in terminating this Contract for cause.
- 3.20 Shop Drawings and Samples:
- 3.20.1 Contractor shall prepare or cause to be prepared shop drawings for fabricated items. Shop drawings shall consist of drawings, diagrams, illustrations, schedules, brochures, and other data which are prepared by the Contractor, sub-Contractor, manufacturer, supplier, or distributor and depict that portion of the work. Shop drawings shall be submitted, reviewed, and approved by the Contractor prior to submitting to the Agency and A/E. Shop drawings approved by the Contractor shall bear a stamp denoting that they have been review and are "approved" or "approved as noted" or similar designation. Contractor shall submit the number of sets as specified in the Delivery Order plans or specifications or in the absence of a specification submit enough copies for the Agency to retain two copies plus the number desired to be returned to the Contractor. The Agency and A/E will review the shop drawings with reasonable promptness but only for conformity with the design.
- 3.20.2 Contractor shall submit samples as required by the Delivery Order. Samples are physical examples furnished by the Contractor of sufficient size and quantity to provide a good representation of the material proposed to be installed. Samples submitted will not be returned unless requested by Contractor and agreed to by the A/E. The Contractor shall pay shipping costs. The final installed product shall match the approved sample.
- 3.21 Inspection and Testing of Materials:
- 3.21.1 The Contractor shall leave uncovered all areas of work that will be covered that are called out in the construction documents to be left uncovered, or the Agency or A/E requests to be left uncovered prior to being inspected. The Contractor shall give adequate notice to the Agency and A/E of the time requested for an inspection of areas to be covered.
- 3.21.2 If the Contractor covers areas that were to be left uncovered, the Contractor shall cause the area to be uncovered for inspection. After being inspected, the Contractor shall repair the area with craftsmen skilled in the appropriate trades needed for the repair at no additional cost to the Agency.
- 3.22 Substitutions:
- 3.22.1 The Contractor shall submit proposed substitutions to the Agency for the Agency's approval prior to execution of each Delivery Order.
- 3.22.2 Reference in the Contract Documents to a designated material, product, thing, or service by specific brand or trade name followed by the words "or equal" and "or approved equal" shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may use the products of other another manufacturer's provided it is an 'approved equal' that meets or exceeds the specification for the specified product. The Contractor must submit adequate information about the product to show that the submitted product meets the level of quality as the product specified.
- 3.22.3 The Contractor shall not substitute any product, article, appliance, equipment, or material that is specified without prior written approval of the Agency.
- 3.23 Receiving and Storing Materials and Equipment: The Contractor shall have an authorized person or persons to receive all items delivered to the site of the Work and shall properly unload, check for completeness of shipment, and in-transit damage. The Contractor shall properly handle and store materials, supplies, equipment etc. in accordance with the contract documents or manufacturer's printed instructions for each product.
- 3.24 Schedule and Reports: Promptly after the Agency issues a Delivery Order, the Contractor shall present a construction schedule in a form satisfactory to the Agency. At intervals agreed upon in the Delivery Order, the Contractor shall update the schedule showing the actual progress of the work and adjustment in completion dates. If the work falls behind schedule, the Contractor shall present a plan for completion of the work by the scheduled date for completion.

### 3.25 Time for Completion:

- 3.25.1 Each Delivery Order signed by the Agency and Contractor shall set forth the time for completion of the Work specified therein. Contractor shall make a request for extension of time within seven days of the event giving rise to the request. The Contractor shall adequately document delays of the work that are due to circumstances beyond the control of the Contractor and shall submit the documentation to the Agency with any request for an extension. In the event of ongoing delay, the Contractor shall notify the Agency in its request for an extension of time that the cause of delay is ongoing. In such case, the Contractor shall supplement its request the cause of delay ends or the project is completed, whichever is sooner.
- 3.25.2 The Agency will review each request for time extension and equitably adjust the time for completion where (1) the event of delay actually impacted the critical path of the project and was beyond the control of the Contractor, and (2) completion of the Work was actually delayed.

## 4. CONTRACT ADMINISTRATION

- 4.1 Delivery Order - Cost Proposal: From time to time, the Agency will request a cost proposal for specific work and provide the Contractor adequate project information necessary to prepare a cost proposal. The Contractor shall prepare a cost proposal to complete the Work as requested. Unless specified by the Agency in its request, the cost proposal shall include the time frame for completion of the work. The Contractor shall submit the cost proposal to the Agency within one week of the request or as otherwise agreed upon by the Agency. The cost proposal shall be prepared according to the following method: *(Agency, check box that applies to this contract)*

**Unit Prices** – Unless the Contractor proposes to provide work at a lower price, the Contractor shall use the unit prices, as bid, times the number of units required for the Work to arrive at an extended price for that item of Work. The total of all extended prices becomes the Contractors price for the cost proposal. The unit prices include all labor, supervision, material, equipment, taxes, overhead (including but not limited to insurance), delivery, setup, installation, and profit. The Contractor may not add any additional mark-up to its price. If the Contractor chooses to subcontract some or all of the Work, the Contractor must still use the unit prices bid for pricing the subcontracted work. If the Contractor proposes not to use the unit prices bid as the basis for the price of its work or subcontracted work, it must document that the proposed price is lower than the price would be if the Contractor used the unit prices.

**Low Bid** – The Agency shall competitively bid the Work against all eligible Indefinite Delivery Contractors. The Delivery Order bid price shall include all labor, supervision, material, equipment, taxes, overhead (including but not limited to insurance), delivery, setup, installation, and profit. Under this pricing method, the Agency will award the Delivery Order to the lowest bidder.

### 4.2 Changes in the Work of a Delivery Order:

- 4.2.1 Any changes in the work must be approved by the Agency and executed by using the SE-695, Construction Services IDC Delivery Order Modification. The SE-695 must be signed by the Contractor and Agency. Except when the Delivery Order was awarded on the basis of competitive bids, the cost of any change order shall be calculated using the same method as pricing the Delivery Order.
- 4.2.2 At the Owner's request, the Contractor shall prepare a proposal to perform the work of a proposed Change Order setting forth the amount of the proposed adjustment, if any, in the Contract Sum; and the extent of the proposed adjustment, if any, in the Contract Time. The Owner's request shall include any revisions to the Drawings or Specifications necessary to define the changes in the Work. Within fifteen days of receiving the request, the Contractor shall submit the proposal to the Owner and Architect along with all substantiating documentation.
- 4.2.2 In the absence of a total agreement concerning the item(s) for a change order, a Construction Change Directive shall be used.
- 4.2.3 **Agreed Overhead and Profit Rates:**  
For any adjustment to the Delivery Order for which overhead and profit may be recovered, other than those made pursuant to Unit Prices stated in the Contract Documents, the Contractor agrees to charge and accept, as full payment for overhead and profit, the following percentages of costs attributable to the change in the Work. The percentages cited below shall be considered to include all indirect costs including, but not limited to: field and office managers, supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. The allowable percentages for overhead and profit are as follows:
- .1 To the Contractor for work performed by the Contractor's own forces, 17% of the Contractor's actual costs.
  - .2 To each Subcontractor for work performed by the Subcontractor's own forces, 17% of the subcontractor's actual costs.
  - .3 To the Contractor for work performed by a subcontractor, 10% of the subcontractor's actual costs (not including the subcontractor's overhead and profit).

## 4.3 Payments:

- 4.3.1 Contractor may submit monthly applications for payment for the Work of Delivery Orders scheduled to last two months or more in duration. Contractor shall submit only one application for payment for the Work of Delivery Orders scheduled to last less than two months in duration.
- 4.3.2 Delivery Orders Awarded by low bid: If the Contractor intends to submit more than one application for payment, the Contractor shall submit to the A/E, within ten days of Delivery Order award, a schedule of values allocating the entire Delivery Order Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the A/E may require. This schedule, unless objected to by the A/E, shall be used as a basis for reviewing the Contractor's Applications for Payment. Contractor shall base its monthly applications for payment on work completed up to the date of the application using the approved schedule of values. The sum of all payments to the Contractor shall not exceed the agreed upon cost of the work set forth in the Delivery Order as adjusted by subsequent modifications to the Delivery Order, if any.
- 4.3.2 Contractor shall base its applications for payment on work completed up to the date of the application using the units of measure and prices contained in the *(Agency, check the box(es) if it applies to this Contract)*
- Unit price schedule in Contractors bid.
- 4.3.3 Contractor's applications for payment may include materials suitably stored on site for use in the Work provided the Contractor submits:
- Proof of purchase & delivery;
  - Documentation showing the location of the material;
  - Certificate of insurance for the material with adequate coverage showing the Agency as the certificate holder.
- 4.3.4 The Agency will make payments to the Contractor for completed work based on the actual units or quantity of work completed. The Agency will make payments on the undisputed amounts of an application for payment within 21 days of receipt of the application.
- 4.3.5 Subcontractor Payments (Chapter 6 of Title 29 of the South Carolina Code of Laws, as amended): The Contractor shall pay each subcontractor no later than seven (7) days after receipt of payment from the Agency the amount to which the subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the subcontractor's portion of the Work. By appropriate agreement with its subcontractors, the Contractor shall require each subcontractor to make payments to Sub-subcontractors in a similar manner.
- 4.3.6 If the Agency does not pay the Contractor within seven (7) days after the time established in Part 4.3.2 the undisputed amount of a payment request, then upon seven (7) additional days written notice to the Agency, the Contractor may stop the Work until the Contractor has received payment of the undisputed amount owing. The Contract Time and the Contract Sum shall be equitably adjusted by the amount of the Contractor's reasonable costs of shut down, delay and start-up, plus interest as provided for in the Contract Documents.
- 4.3.7 Retainage: The Agency, at its option, may withhold retainage as provided in SC Code § 11-35-3030(4).
- 4.3.8 Final Payment: Upon final payment by the Agency to the Contractor for the Work of a Delivery Order, all rights, title, and interest in and to all improvements and equipment constructed or installed on the premises shall vest in the Agency at no additional cost, free and clear of all any liens and encumbrances created or caused by the Contractor.
- 4.3.9 Withholding of Payments: Payments may be withheld to the extent of, and on account of (1) defective Work not remedied, or Work not performed in accordance with the Contract Documents; (2) claims filed by third parties; (3) failure of the Contractor to make payments promptly to the subcontractors for labor, materials, or equipment; (4) persistent failure to carry perform the Work in accordance with the Contract Documents; (5) failure by the Contractor to perform its obligations under the Contract Documents; or (6) a default by the Contractor under the Contract Documents. The Agency shall promptly notify the Contractor of any reason for withholding payment.
- 4.4 Delivery Order Completion and Closeout: Upon completion of all Work, the Contractor shall notify the Agency of its completion. The Agency shall schedule a Final Inspection and allow the Contractor to demonstrate that all equipment and systems operate as designed. The Agency may elect to have other persons, firms or agencies participate in the inspections. Projects exceeding the Agency's construction procurement certification level shall require an inspection by the Office of State Engineer (OSE) and the State Engineer's issuance of a Certificate of Occupancy. (The Contractor may find Agency construction certification limits on Procurement Services website at <https://procurement.sc.gov/agency/audits/cert-limits>) Final payment will not be due nor retained funds released until

(1) the Agency agrees that the project is complete, (2) OSE or the Agency, which ever has authority, issues a Certificate of Occupancy (SE-585), and (3) the Agency receives from the Contractor the following:

- a. Affidavit of payment of debts and claims;
- b. Consent of Surety, if any, to final payment.

## **5. DISPUTES**

- 5.1 Both parties shall attempt to resolve disputes through good faith negotiations.
- 5.2 All disputes, claims, or controversies relating to the Contract, that cannot be resolved through good faith negotiations between the parties shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the State regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used herein, "the State" includes the Agency and the State Fiscal Accountability Authority.
- 5.3 Interest: Payments due to the Contractor and unpaid under the Contract Documents shall bear interest only if and to the extent allowed by Title 29, Chapter 6, Article 1 of the South Carolina Code of Laws. Amounts due to the Agency shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.
- 5.4 Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any claims or controversies relating to the Contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided for the Contractor's Representative or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.
- 5.5 Continuation of Work: Pending final resolution of any dispute under this Contract, the Contractor will proceed diligently with the performance of its duties and obligations under the Contract Documents, and the Agency will continue to make payments of undisputed amounts in accordance with the Contract Documents.

## **6. LIMITATION OF LIABILITY**

- 6.1 Notwithstanding any other provision of the Contract Documents, but subject to a duty of good faith and fair dealing, the Contractor and Agency waive Claims against each other for listed damages arising out of or relating to this Contract. This mutual waiver includes
  - 6.1.1 For the Agency, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) costs suffered by a third party unable to commence work, (vi) reasonable attorney's fees, (vii) any interest, except to the extent allowed by Part 5.3 (Interest), (viii) lost revenue and profit for lost use of the property, (ix) costs resulting from lost productivity or efficiency, and (x) damages incurred by the Agency for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
  - 6.1.2 For the Contractor, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) reasonable attorney's fees, (vi) any interest, except to the extent allowed by Part 5.3 (Interest); (vii) unamortized equipment costs; and (viii) losses incurred by subcontractors for the types of damages the Contractor has waived as against the Agency.
- 6.2 This mutual waiver is applicable, without limitation, to all listed damages due to either party's termination in accordance with Part 9. Nothing contained in this Part 6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. This mutual waiver is not applicable to amounts due or obligations under Part 3.17 (Indemnification).

## **7. Hazardous Materials**

- 7.1 Contractor's Responsibilities With Respect to Hazardous Materials: The scope of Work the Contractor is to perform pursuant to this Contract excludes any work or service of any nature associated or connected with the discovery, identification, abatement, cleanup, control, or removal of any currently existing Hazardous Materials or Mold on, in, or nearby the site of the Work. When requesting cost proposals, the Agency will identify known Hazardous Materials or Mold on, in, or nearby the site of the Work. The Agency agrees that all duties and obligations in connection with any Hazardous Materials or Mold currently located in, on or nearby the Site or brought into the Site by a party other than the Contractor or its subcontractors, other than those defined in the Delivery Order for the Work affected by the Hazardous Material or Mold, are not the Contractor's responsibility. Should the Contractor become aware, discover or based on

reasonable evidence suspect the presence of Hazardous Materials or Mold beyond those addressed in the Delivery Order for the Work affected by the Hazardous Material or Mold, the Contractor will immediately cease work in the affected area, and will promptly notify the Agency of the conditions discovered. Should the Contractor stop work because of such discovery or suspicion of Hazardous Materials or Mold, then the Contract Time will, should the Agency elect to choose to continue the Work after remedy thereof, be reasonably extended by Change Order to cover the period required for abatement, cleanup, or removal of the Hazardous Materials or Mold. The Contractor will not be held responsible for any claims, damages, costs, or expenses of any kind associated with such period during which work has been stopped as a result of Hazardous Materials or Mold.

- 7.2 Hazardous Materials Introduced to the Site by Contractor: If the Contractor, its subcontractors, and any party for whom they may be liable, introduces any Hazardous Materials to the Site then the Contractor, at its sole cost and expense, shall be responsible for any response, removal, cleanup, and/or other remedial action required by applicable law. If any Mold occurs within the Site as the result of the negligent implementation of the Project or the improper functioning of the Conservation Measures, then the Contractor, at its sole cost and expense, shall be responsible for any response, removal, cleanup, or other remedial action required by applicable law. Except as to the Contractor's initial response to an emergency, any such remedial action(s) shall require the prior review and approval of the Agency.

## 8. MISCELLANEOUS PROVISIONS

- 8.1 Governing Law: This Contract shall be governed by the laws of South Carolina, except its choice of law rules.
- 8.2 Severability: If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.
- 8.3 No Waiver: No course of dealing or failure of the Agency and/or the Contractor to enforce strictly any term, right or condition of this Contract shall be construed as a waiver of such term, right or condition. No express waiver of any term, right, or condition of this Contract shall operate as a waiver of any other term, right, or condition.
- 8.4 Rights Cumulative: Except as otherwise provided in this Contract, (i) rights and remedies available to the Agency and/or the Contractor as set forth in this Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the Parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to the Agency and/or the Contractor in any provision of this Contract shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.
- 8.5 Notices: Any notices required to be given under this Contract shall be in writing and shall be delivered either by (i) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the U.S. mail; (ii) a reputable messenger service or a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such messenger or courier; or (iii) personal delivery with receipt acknowledged in writing, in which case notice shall be deemed delivered when received. All notices shall be sent to the representatives identified in the Part G of the Agreement at the addresses provided therein. The foregoing addresses may be changed from time to time by notice to the other Party in the manner herein provided for.
- 8.6 Economic Conflict of Interest: A Contractor shall not have or exercise any official responsibility regarding a public contract in which the Contractor, or a business with which he is associated, has an economic interest. A person working for Contractor shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If Contractor is asked by any person to violate, or does violate, either of these restrictions, Contractor shall immediately communicate such information to the Agency Representative. The State may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in SC Code § 8-13-100.
- 8.7 Illegal Immigration: Contractor certifies and agrees that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to Contractor and its subcontractors or sub-subcontractors; or (b) that Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to SC Code § 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." Contractor agrees to include in any contracts with its subcontractors language requiring its subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov))



- 8.8 Drug-Free Workplace: The Contractor certifies to the Agency that Contractor will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.
- 8.9 False Claims: According to the SC Code § 16-13-240, “a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty” of a crime.
- 8.10 Non-Indemnification: Any term or condition is void to the extent it requires the State to indemnify anyone. It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations (SC Code § 11-9-20). It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year. (SC Code § 11-1-40)
- 8.11 Enforcement and Interpretation of Building Codes: As required by SC Code § 10-1-180), OSE shall determine the enforcement and interpretation of all building codes and referenced standards on state buildings. The Contractor shall refer any questions, comments, or directives from local officials to the Agency and OSE for resolution. When the amount of a Delivery Order exceeds the construction procurement certification of the Agency, the Contractor shall not commence the Work of the Delivery Order before receiving a copy of the Building permit issued by OSE. (The Contractor may find Agency construction certification limits on Procurement Services website at <https://procurement.sc.gov/agency/audits/cert-limits>)
- 8.12 Assignment: The Agency and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements and obligations contained in this Contract. Neither party to the Contract shall assign the Contract as a whole, or in part, without written consent of the other and then only in accordance with and as permitted by SC Regulation 19-445.2180. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
- 8.13 Open Trade (Jun 2015): During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

## 9. SUSPENSION OR TERMINATION

- 9.1 Agency Right of Suspension: The Agency may, at any time, suspend the work, in whole or in part, with or without cause for such period of time as determined by the Agency. Except in the event of suspension due to a default of the Contractor, the contract sum will be equitably adjusted to reflect reasonable costs actually incurred by the Contractor due to delay or interruption resulting from such suspension.
- 9.2 Agency Right of Termination:
- 9.2.1 Termination for Cause: If the Contractor defaults, persistently fails or neglects to perform the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Agency shall provide written notice of such default, failure, or neglect to the Contractor. If the Contractor fails to cure such default, failure, or neglect within fifteen days from receipt of the Agency’s notice, the Agency may, without prejudice to any other right or remedy the Agency may have, terminate the Contract and take possession of the area at the Site affected by the Work.
- 9.2.2 Termination for Convenience: The Agency may, for its convenience, terminate all or any portion of the Work under an individual Delivery Order, or terminate this entire Contract, by ten (10) days written notice stating the effective date of the termination. Thereafter, the Agency shall pay the Contractor for Work actually performed before the date of termination. No payments shall be made for Work not actually performed, and no payment shall be made or due for lost profits on account of Work not performed.
- 9.3 Contractor Right of Termination:
- 9.3.1 The Contractor may terminate the contract, or Delivery Order, if work is stopped through no fault of the Contractor, or other persons performing work either directly or indirectly for the Contractor, for a period of time exceeding 60 consecutive calendar days due to a court order or other public authority having jurisdiction; or a Declared National emergency which requires the work to be stopped.
- 9.3.2 Agency Failure to Make Payment: Subject to the Agency’s right to withhold payments pursuant to Part 3.4.7, if the Agency fails to make payments to the Contractor as set forth in Part 10 and any other applicable provisions of the Contract Documents, the Contractor may, upon thirty (30) days’ prior written notice to the Agency, terminate the Contract and recover from the Agency payment for all Work performed and for proven loss with respect to materials, equipment, tools, and machinery, including reasonable overhead, profit and damages applicable to the Work for the Contract Services performed through the date thereof.

**SE-690**

**CONSTRUCTION SERVICES IDC DELIVERY ORDER**

**AGENCY:** \_\_\_\_\_

**DELIVERY ORDER PROJECT NAME:** \_\_\_\_\_

**DELIVERY ORDER PROJECT NUMBER:** \_\_\_\_\_

**IDC PROJECT NUMBER:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_

**COST INFORMATION:**

**DELIVERY ORDER      CONTRACT**

1. Maximum Total Amount of this IDC:		\$	
2. Maximum Total Amount Allowed for Delivery Order:	\$		
3. Amount of this Delivery Order:	\$		
4. Total Amount of Previous Delivery Orders (including Modifications):		\$	
5. IDC Total, Including this Delivery Order:		\$	0.00
6. Balance Remaining for this IDC:		\$	0.00

**SCHEDULE:**

1. Date of Commencement:	
2. Days Allowed:	
3. Date of Substantial Completion:	

**DESCRIPTION OF DELIVERY ORDER SCOPE OF WORK:** *(attach Contractor's Proposal)* \_\_\_\_\_

**LIST OF DELIVERY ORDER DOCUMENTS:** *(refer to attachments as necessary)* \_\_\_\_\_

The Agency and the Contractor hereby agree, as indicated by the signatures below, to the scope of work identified in the Contract Documents listed above, the Contractor's Cost Proposal dated the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, and this Delivery Order which shall be assigned to the Indefinite Delivery Contract identified above.

**NOTICE TO PROCEED** is hereby given on this the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_. The Dates of Commencement and Substantial Completion are as noted above and shall be used for determining completion and the applicability of Liquidated Damages. Liquidated Damages in the amount of \$ \_\_\_\_per day will be assessed for failure to complete the Work by the agreed upon date of completion. Failure to commence actual work on this Delivery Order within seven (7) days from the Date of Commencement will entitle the Agency to consider the Contractor non-responsible, and may withdraw this Delivery Order and terminate the Contract in accordance with the Contract Documents.

**DELIVERY ORDER WITHIN AGENCY CONSTRUCTION CONTRACT CERTIFICATION:**

*(Agency MUST check one)*      Yes       No

**IF "NO", OSE APPROVAL OF DELIVERY ORDER DOCUMENTS:** \_\_\_\_\_  
*(Signature of OSE Project Manager)*      \_\_\_\_\_  
*Date*

**AGENCY:**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**Print Name:** \_\_\_\_\_

**Print Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**CONTRACTOR**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**Print Name:** \_\_\_\_\_

**Print Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**COMPLETION CONFIRMATION BY AGENCY:**

**ACTUAL COMPLETION DATE:** \_\_\_\_\_      **LIQUIDATED DAMAGES ASSESSED:** \_\_\_\_\_

**CONFIRMED BY:** \_\_\_\_\_      **DATE:** \_\_\_\_\_  
*(Signature of Agency Representative)*

**TITLE:** \_\_\_\_\_

**SE-695**

MODIFICATION NO.: \_\_\_\_\_

**CONSTRUCTION SERVICES IDC DELIVERY ORDER MODIFICATION**

**AGENCY:** \_\_\_\_\_

**DELIVERY ORDER PROJECT NAME:** \_\_\_\_\_

**DELIVERY ORDER PROJECT NUMBER:** \_\_\_\_\_

**IDC PROJECT NUMBER:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_

**COST INFORMATION:**

**DELIVERY ORDER**

**CONTRACT**

1. Maximum Total Amount of this IDC:		\$	
2. Maximum Total Amount Allowed for Delivery Order:			
3. Current Amount of this Delivery Order:			
4. Amount of this Modification:			
5. Adjusted Amount of this Delivery Order	\$	0.00	
6. IDC Total (Sum of all Delivery Orders, including this DO) Prior to this Modification:		\$	
7. IDC Total (Sum of all Delivery Orders) Including this Modification:		\$	0.00
8. Balance Remaining for this IDC:		\$	0.00

**SCHEDULE:**

1. Date of Commencement:	
2. Previous Days Allowed	
3. Additional Days Allowed with this Modification	
4. Revised Date of Completion:	

**DESCRIPTION OF DELIVERY ORDER SCOPE MODIFICATION:** *(attach Contractor's Proposal)* \_\_\_\_\_

**LIST OF MODIFICATION DOCUMENTS:** *(refer to attachments as necessary)* \_\_\_\_\_

The Agency and the Contractor hereby agree, as indicated by the signatures below, to the revised scope of work identified in the Modification Documents listed above, the Contractor's Cost Proposal dated the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, and this Delivery Order Modification, which shall be assigned to the Indefinite Delivery Contract identified above.

**DELIVERY ORDER INCLUDING MODIFICATION IS WITHIN AGENCY CONSTRUCTION CONTRACT CERTIFICATION:**

*(Agency MUST check one)* Yes  No

IF "NO", OSE APPROVAL OF DELIVERY ORDER DOCUMENTS: \_\_\_\_\_  
*(Signature of OSE Project Manager)* \_\_\_\_\_ *Date*

**AGENCY:**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**CONTRACTOR**

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## CLAUSES FOR USE IN DESIGN-BUILD CONTRACTS

1. Economic Conflict of Interest (2011): A contractor shall not have or exercise any official responsibility regarding a public contract in which the contractor, or a business with which he is associated, has an economic interest. A person working for contractor shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If contractor is asked by any person to violate, or does violate, either of these restrictions, contractor shall immediately communicate such information to the procurement officer. The state may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in Section 8-13-100.
2. ILLEGAL IMMIGRATION:
  - a. Contractor certifies and agrees that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the State upon request any documentation required to establish either that:
    - 1) Title 8, Chapter 14 is inapplicable both to Contractor and its subcontractors or sub-subcontractors; or
    - 2) Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to SC Code § 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both."
  - b. Contractor agrees to include in any contracts with its subcontractors language requiring its subcontractors to
    - 1) comply with the applicable requirements of Title 8, Chapter 14, and
    - 2) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov))
3. DRUG-FREE WORKPLACE: The Contractor certifies to the Owner that Contractor will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.
4. FALSE CLAIMS: According to the SC Code § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.
5. NON-INDEMNIFICATION: Any term or condition is void to the extent it requires the State to indemnify anyone. It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations. (SC Code § 11-9-20) It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year. (SC Code § 11-1-40)
6. CLAIMS AND DISPUTE RESOLUTION
  - a. **Duty of Cooperation**:
    - 1) Contractor and Owner are fully committed to working with each other throughout the Project to avoid or minimize claims. To further this goal, Contractor and Owner agree to communicate regularly with each other at all times notifying one another as soon as reasonably possible of any issue that if not addressed may cause loss, delay, and/or disruption of the Work. If claims do arise, Contractor and Owner each commit to resolving such claims in an amicable, professional, and expeditious manner to avoid unnecessary losses, delays, and disruptions to the Work.
    - 2) In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.
  - b. **Resolution of Disputes**:
    - 1) If a claim is not resolved pursuant to Section 1 above to the satisfaction of either party, both parties shall attempt to resolve the dispute at the field level through discussions between Contractor's Representative and Owner's Representative. If a dispute cannot be resolved through Contractor's Representative and Owner's Representative, then the Contractor's Senior Representative and the Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than twenty-one days after such a request is made, to attempt to resolve such dispute. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute. The meetings required by this Section are a condition precedent to resolution pursuant to Section 2.b.

- 2) If after meeting in accordance with the provisions of Section 2.a., the Senior Representatives determine that the dispute cannot be resolved on terms satisfactory to both the Contractor and the Owner, then either party may submit the dispute by written request to South Carolina's Chief Procurement Officer for Construction (CPOC). Except as otherwise provided in this Article, all claims or controversies relating to the Contract shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the State regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United State's Constitution.
- 3) If any party seeks resolution to a dispute pursuant to Section 2.b., the parties shall participate in non-binding mediation to resolve the claim. If the claim is governed by Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws as amended and the amount in controversy is \$100,000.00 or less, the CPOC shall appoint a mediator, otherwise, the mediation shall be conducted by an impartial mediator selected by mutual agreement of the parties, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.
- 4) Without relieving any party from the other requirements of this Article, either party may initiate proceedings in the appropriate forum prior to initiating or completing the procedures required by Sections (a) and (b)(1) if such action is necessary to preserve a claim by avoiding the application of any applicable statutory period of limitation or repose.
- 5) **SERVICE OF PROCESS** - Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any claims, claims, or controversies relating to the Contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided for the Contractor's Senior Representative or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

#### 7. PRICING DATA AND AUDIT:

- a. **Cost or Pricing Data** - Upon request of the Owner, Contractor shall submit cost or pricing data prior to execution of a Modification which exceeds \$100,000. Contractor shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date prior to the date of pricing the Modification. Contractor's price, including profit, shall be adjusted to exclude any significant sums by which such price was increased because Contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the parties. Notwithstanding Subparagraph 9.10.4, such adjustments may be made after final payment to the Contractor.
- b. **Cost or pricing data** means all facts that, as of the date specified by the parties, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.
- c. **Records Retention** - The term "records" means any books or records that relate to cost or pricing data that Contractor is required to submit pursuant to SC Code § 7.6.1. Contractor shall maintain records for three years from the date of final payment, or longer if requested by the chief procurement officer. The Owner may audit Contractor's records at reasonable times and places.

#### 8. INTELLECTUAL PROPERTY INDEMNITY:

- a. Without limitation and notwithstanding any other provision in this agreement, Design-Builder shall, upon receipt of notification, defend and indemnify the Indemnitees against all actions, proceedings or claims of any nature (and for all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving Intellectual Property (IP) rights related to the Instruments of Service. Design-Builder's obligations under this paragraph do not apply to a claim to the extent that:
  - 1) the claim is caused by Design-Builder's compliance with a detailed, exact statement of particulars (such as a statement prescribing materials, dimensions, and quality of work) furnished by the State unless Design-Builder knew its compliance with the State's specifications would infringe an IP right, or

- 2) the claim is caused by Design-Builder's compliance with a detailed, exact statement of particulars furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Design-Builder and failed to identify such product to Design-Builder.
  - b. The State must reasonably cooperate with Design-Builder's defense of such claims or suits and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, may allow Design-Builder sole control of the defense, so long as the defense is diligently and capably prosecuted. The State may participate in the defense of any action.
  - c. Design-Builder's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.
  - d. "IP rights" means any rights protected by the laws governing patents, copyrights, trademarks, trade secrets, or any other proprietary rights. As used in this paragraph, "Indemnitees" means the State (including its instrumentalities, agencies, departments, boards, and political subdivisions), the contractor, the subcontractors at all tiers, and the officers, agents and employees of all the forgoing.
9. **OPEN TRADE (JUN 2015):** During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

## CLAUSES FOR USE IN DESIGN-BUILD PROJECTS RFP

1. Disclosure of Conflicts of Interest or Unfair Competitive Advantage (2011): You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. Without limitation, an unfair competitive advantage exists where a contractor competing for award possesses either proprietary information that was obtained from a government official without proper authorization or source selection information (as defined in SC Regulation 19-445.2010(C)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered.
2. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION: GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SC CODE § 16-9-10 AND OTHER APPLICABLE LAWS.
  - a. By submitting an offer, the offeror certifies that—
    - 1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—
      - (a) Those prices;
      - (b) The intention to submit an offer; or
      - (c) The methods or factors used to calculate the prices offered.
    - 2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
    - 3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
  - b. Each signature on the offer is considered to be a certification by the signatory that the signatory—
    - 1) Is the person in the offeror's organization responsible for determining the prices being offered in this offer, and that the signatory has not participated and will not participate in any action contrary to paragraphs 1.A through 1.C of this certification; or
    - 2) (a) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs 1.a through 1.c of this certification [As used in this subdivision 2.b.i, the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid];
      - (b) As an authorized agent, does certify that the principals referenced in subdivision 2.b.i of this certification have not participated, and will not participate, in any action contrary to paragraphs 1.a through 1.c of this certification; and
      - (c) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs 1.a through 1.c of this certification.
  - c. If the offeror deletes or modifies paragraph 1.b of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.
3. CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS:
  - a. By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-
    - 1) Offeror and/or any of its Principals-
      - (a) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
      - (b) Have not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of bids; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
      - (c) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph 1.a.(i)(b) of this provision.

- 2) Offeror has not, within a three-year period preceding this bid, had one or more contracts terminated for default by any public (Federal, state, or local) entity.
- b. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).
  - c. Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
  - d. If Offeror is unable to certify the representations stated in paragraphs 1.a., Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.
  - e. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  - f. The certification in paragraph 1 of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.
4. **ETHICS CERTIFICATE:** By submitting a offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: SC Code § 8-13-700, regarding use of official position for financial gain; SC Code § 8-13-705, regarding gifts to influence action of public official; SC Code § 8-13-720, regarding offering money for advice or assistance of public official; SC Code §§ 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; SC Code § 8-13-790, regarding recovery of kickbacks; SC Code § 8-13-1150, regarding statements to be filed by consultants; and SC Code § 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by SC Code § 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed.
5. **RESTRICTIONS APPLICABLE TO OFFERORS & GIFTS:** Violation of these restrictions may result in disqualification of your bid, suspension or debarment, and may constitute a violation of the state Ethics Act.
- a. After issuance of the solicitation, ***offeror agrees not to discuss this procurement activity in any way with the Owner or its employees, agents or officials.*** All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed.
  - b. Unless otherwise approved in writing by the Procurement Officer, ***offeror agrees not to give anything to the Owner, any affiliated organizations, or the employees, agents or officials of either, prior to award.***
  - c. Offeror acknowledges that the policy of the State is that a governmental body should not accept or solicit a gift, directly or indirectly, from a donor if the governmental body has reason to believe the donor has or is seeking to obtain contractual or other business or financial relationships with the governmental body. SC Regulation 19-445.2165(C) broadly defines the term donor.
6. **NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING (IMPORTANT TAX NOTICE - NONRESIDENTS ONLY):**
- a. Withholding Requirements for Payments to Nonresidents: SC Code § 12-8-550 requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident.
  - b. The withholding requirement does not apply to:
    - 1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina,
    - 2) nonresidents who are not conducting business in South Carolina,
    - 3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or



- 4) payments to a nonresident who
  - (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and
  - (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.
- c. For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: [www.sctax.org](http://www.sctax.org).
- d. This notice is for informational purposes only. This Owner does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898- 5383.
- e. Please see the "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" form (Form Number I-312) located at: <http://www.sctax.org/forms/withholding/i-312-form>.

**7. SUBMITTING CONFIDENTIAL INFORMATION:**

- a. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either
  - 1) a trade secret as defined in SC Code § 30-4-40(a)(1), or
  - 2) privileged & confidential, as that phrase is used in SC Code § 11-35-410.
- b. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by SC Code § 39-8-20 of the Trade Secrets Act.
- c. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by SC Code § 11-35-1810.
- d. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire bid as confidential, trade secret, or protected! If your bid or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page.
- e. By submitting a response to this solicitation, Offeror
  - 1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, & documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED",
  - 2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and
  - 3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure.
- f. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED".
- g. By submitting a response, Offeror agrees to defend, indemnify & hold harmless the State of South Carolina, its officers & employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED".

- 8. SOLICITATION INFORMATION FROM SOURCES OTHER THAN OFFICIAL SOURCE:** South Carolina Business Opportunities (SCBO) is the official state government publication for State of South Carolina solicitations. Any information on State agency solicitations obtained from any other source is unofficial and any reliance placed on such information is at the offeror's sole risk and is without recourse under the South Carolina Consolidated Procurement Code.

9. **TAX CREDIT FOR SUBCONTRACTING WITH MINORITY FIRMS:** Pursuant to SC Code § 12-6-3350, taxpayers, who utilize certified minority subcontractors, may take a tax credit equal to 4% of the payments they make to said subcontractors. The payments claimed must be based on work performed directly for a South Carolina state contract. The credit is limited to a maximum of fifty thousand dollars annually. The taxpayer is eligible to claim the credit for 10 consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Taxpayers must maintain evidence of work performed for a State contract by the minority subcontractor. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. The subcontractor must be certified as to the criteria of a "Minority Firm" by the Governor's Office of Small and Minority Business Assistance (OSMBA). Certificates are issued to subcontractors upon successful completion of the certification process. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. Reference: SC Code § 11-35-5010 – Definition for Minority Subcontractor & SC Code § 11-35-5230 (B) – Regulations for Negotiating with State Minority Firms.
10. **CLARIFICATION (NOV 2007):** Pursuant to SC Code § 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [SC Code § 11-35-1520(8); SC Reg.19-445.2080]
11. **DISCUSSIONS & NEGOTIATIONS (NOV 2007):** Submit your best terms from a cost or price and from a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. If improper revisions are submitted, the State may elect to consider only your unrevised initial proposal. [SC Code § 11-35-1530(6); SC Reg 19-445.2095(I)] The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in SC Code § 11-35-1530(8). If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal.
12. **OPEN TRADE REPRESENTATION (JUN 2015):** By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

# SE-710

## INVITATION FOR DESIGN-BUILD SERVICES

AGENCY/OWNER: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

DESCRIPTION OF PROJECT/SERVICES: \_\_\_\_\_

BID/SUBMITTAL DUE DATE: \_\_\_\_\_ CONSTRUCTION COST RANGE: \$ \_\_\_\_\_ to \$ \_\_\_\_\_ N/A

PROJECT DELIVERY METHOD: Design-Build

RFQ/RFP DOCUMENTS MAY BE OBTAINED FROM: \_\_\_\_\_

- Contractor will be required to provide Performance and Labor and Material Payment Bonds, each in the amount of 100% of the contract price.
- **PUBLIC NOTICES:** All notices (Notice of Meetings, SE-770, Notice of Intent to Award DB Contract) shall be posted at the following location: \_\_\_\_\_
- **LICENSURE:** To be considered for selection, persons or firms must be properly licensed in accordance with the requirements of Title 40 of the SC Code of Laws, as amended, at the time of resume submission.
- To submit confidential information, see <https://procurement.sc.gov/construction/ose-confidential>.
- In accordance with the South Carolina Green Purchasing Initiative, submittals cannot exceed \_\_\_\_\_ pages, front and back, including covers, which must be soft – no hard notebooks. The Standard Federal Form 330 is not included in this page count.
- All written communications with parties submitting information will be via email. Agency **WILL NOT** accept submittals via email.
- Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with this solicitation or the intended award or award of a contract under this solicitation may protest to the State Engineer in accordance with Section 11-35-4210 at: CPO, Office of State Engineer, 1201 Main Street, Suite 600, Columbia, SC 29201. EMAIL: [protest-ose@mno.sc.gov](mailto:protest-ose@mno.sc.gov)

AGENCY PROJECT COORDINATOR: \_\_\_\_\_ TITLE: \_\_\_\_\_

EMAIL: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

NON-MANDATORY PRE-SUBMITTAL CONFERENCE: Yes  No

CONFERENCE DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

CONFERENCE PLACE: \_\_\_\_\_

SUBMITTAL DUE DATE: See Top of Page TIME: \_\_\_\_\_ NUMBER OF COPIES: \_\_\_\_\_

SUBMITTAL DELIVERY ADDRESSES:

**HAND-DELIVERY:** \_\_\_\_\_ **MAIL SERVICE:** \_\_\_\_\_

Attn: \_\_\_\_\_ Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

(OSE Project Manager)

### INSTRUCTIONS TO THE AGENCY:

1. Submit a copy of the completed SE-710 to OSE Project Manager in Word format.
2. OSE Project Manager will review and send approved copy to SCBO and the Agency.

**SE-711  
REGISTER OF PROPOSALS - DESIGN-BUILD**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**FIRMS RESPONDING TO THE INVITATION FOR DESIGN-BUILD SERVICES REQUEST FOR PROPOSALS:**

<u>Firm Name</u>	<u>Date of modifications to Proposals (if any)</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____
13. _____	_____
14. _____	_____
15. _____	_____
16. _____	_____
17. _____	_____
18. _____	_____
19. _____	_____
20. _____	_____

**AGENCY CERTIFICATION**

I certify that the above information is correct.

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Agency Project Manager)*

**PRINT NAME:** \_\_\_\_\_

**WITNESS:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Witness)*

**PRINT NAME:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Submit to OSE Project Manager for information.
2. File this form with the other procurement documents.

**SE-712**

**SELECTION COMMITTEE REPORT FOR RFQ PREQUALIFICATION -  
DESIGN-BUILD**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

The Agency Selection Committee met on \_\_\_\_\_ (*date*) to review RFQ submittals for this project. The Invitation for Design-Build Services (SE-710) for this project was advertised in South Carolina Business Opportunities (SCBO) beginning on: \_\_\_\_\_ (date).

**1. FIRM PREQUALIFIED UNDER THE RFQ:** \_\_\_\_\_

**REASONS FOR THEIR PREQUALIFICATION:** \_\_\_\_\_

**2. FIRM PREQUALIFIED UNDER THE RFQ:** \_\_\_\_\_

**REASONS FOR THEIR PREQUALIFICATION:** \_\_\_\_\_

**3. FIRM PREQUALIFIED UNDER THE RFQ:** \_\_\_\_\_

**REASONS FOR THEIR PREQUALIFICATION:** \_\_\_\_\_

**4. FIRM PREQUALIFIED UNDER THE RFQ:** \_\_\_\_\_

**REASONS FOR THEIR PREQUALIFICATION:** \_\_\_\_\_

**5. FIRM PREQUALIFIED UNDER THE RFQ:** \_\_\_\_\_

**REASONS FOR THEIR PREQUALIFICATION:** \_\_\_\_\_

**SELECTION COMMITTEE CERTIFICATION**

I certify that the above listed firms were prequalified to participate in the RFP and were selected by the Agency Selection Committee for the listed reasons.

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Selection Committee Chair)*

**PRINT NAME:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Submit to OSE Project Manager with SE-713 for information.
2. File this form with the other procurement documents.

**SE-713**

**NOTIFICATION OF PREQUALIFICATION – DESIGN-BUILD**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**TO ALL FIRMS RESPONDING TO THE INVITATION FOR DESIGN-BUILD SERVICES IN CONNECTION WITH THE ABOVE NAMED PROJECT:**

Notice is hereby given that the Agency Selection Committee has, in accordance with the requirements of SC Code §11-35-3023, the *Manual for Planning and Execution of State Permanent Improvement Projects, Part II*, and the solicitation documents, reviewed the qualifications of interested firms and determined the below listed firm to be prequalified to present a proposal for this project:

**NAME OF FIRM:** \_\_\_\_\_

**NAME OF FIRM:** \_\_\_\_\_

**NAME OF FIRM:** \_\_\_\_\_

**NAME OF FIRM:** \_\_\_\_\_

**NAME OF FIRM:** \_\_\_\_\_

Only those firms listed above may attend the Pre-Proposal Conference.

**DATE OF PRE-PROPOSAL CONFERENCE:** \_\_\_\_\_ Mandatory

Non-Mandatory

**TIME:** \_\_\_\_\_ **LOCATION:** \_\_\_\_\_

**BY:** \_\_\_\_\_

*(Signature of Agency Project Manager or Designee)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Send a copy of this SE-713 to all of the firms who responded to the solicitation.
2. Send a copy of the SE-713 to OSE Project Manager.
3. Retain the original SE-713 in the Agency’s procurement file.

**SE-714**  
**DESIGN-BUILD SELECTION COMMITTEE**  
**CONFIDENTIALITY AND CONFLICT OF INTEREST POLICY**

**AGENCY:** \_\_\_\_\_  
**PROJECT NAME:** \_\_\_\_\_  
**PROJECT NUMBER:** \_\_\_\_\_

The Agency and Selection Committee acknowledges the importance of protecting the public’s trust in State Procurement. It is, therefore, the policy of the Agency, and this Selection Committee to abide by all laws, regulations, and policies regarding the avoidance of conflict of interest and the preservation of confidentiality. In order to assure a fair selection process that potential and actual offerors and the public trust, the Selection Committee for this project adopts the following policy:

**CONFIDENTIALITY OF INFORMATION**

Prior to the issuance of an award or notification of intent to award, whichever is earlier, Selection Committee members shall not engage in conduct that:

1. Favors one offeror over another;
2. Reveals an offeror’s technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror’s intellectual property to another offeror;
3. Reveals an offeror’s price without that offeror’s permission;
4. Reveals the names of individuals providing reference information about an offeror’s past performance; or
5. Knowingly furnishes source selection information to anyone other than the responsible procurement officer. “Source selection information” means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (a) proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (b) source selection plans, (c) technical evaluation plans, (d) technical evaluations of proposals, (e) cost or price evaluations of proposals, (f) information regarding which proposals are determined to be reasonably susceptible of being selected for award, (g) rankings of responses, proposals, or competitors, (h) reports, evaluations of source selection panels or evaluation panels, (i) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

**CONFIDENTIALITY OF INFORMATION CERTIFICATION**

I fully understand the confidential nature of the procurement process, including the evaluation of proposals and the selection of potential contractors. By my signature below, I agree to:

1. Return all evaluation-related materials to the Agency Project Manager;
2. Refuse to discuss these materials or the evaluation proceedings with any individual not directly involved in the evaluation; and,
3. Refer all inquiries or contacts concerning any aspect of the procurement process to the Chair of the Selection Committee.

I understand that any actual or apparent conflict of interest or breach of confidentiality, however innocent, may result in my removal from the Selection Committee.

**CONFLICT OF INTEREST CERTIFICATION**

I have been selected to serve on the Selection Committee for the above project. By my signature below, I hereby certify:

1. To the best of my knowledge and belief, no conflict of interest exists that:
  - A. diminishes my capacity to impartially and objectively review the proposals submitted;
  - B. has the potential to result in a biased opinion or unfair advantage; or
  - C. prevents me from evaluating any proposal submitted solely on its merits and in accordance with the evaluation criteria.
2. To the best of my knowledge and belief, I have no apparent conflict of interest that, in the eyes of a reasonable person, may give the appearance of the possibility of partiality in the performance of my duties in this acquisition.
3. In determining whether any conflict of interest exists, I have considered all of the following factors that might place me in a position of conflict, actual or apparent, with the evaluation proceedings:
  - A. my relationship with any potential contractor, subcontractor or direct competitor of any potential contractor under consideration by the evaluation committee;
  - B. my stocks, bonds, and other financial interests or commitments;
  - C. my employment and business arrangements (past, present, and under consideration); and
  - D. to the extent known by me, the financial interests and employment and business arrangements of members of my immediate family.
4. I have a continuing obligation to disclose any circumstance that may create an actual or apparent conflict of interest. If I learn of any such conflict, I will report it immediately to the Procurement Officer. I will perform no more duties related to the evaluation of proposals until I receive instructions on the matter.
5. I have read and understand the requirements of the Ethics, Governmental Accountability, and Campaign Reform Act (State Ethics Act, Title 8, Chapter 13 of the SC Code of Laws. <http://www.scstatehouse.gov/code/title8.php> ).

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**SE-715**

**DESIGN-BUILD SELECTION COMMITTEE MEMBER EVALUATION - RFP**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

EVALUATION CRITERIA	Ranking Range	FIRMS				
		A	B	C	D	E
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
<b>TOTAL POINTS</b> <i>(Use whole numbers only and break all ties before ranking)</i>						
<b>RANKING OF PERSONS OR FIRMS (1,2,3...)</b> <i>(Transfer to SE-417)</i>						

FIRMS SUBMITTING PROPOSAL	
A.	D.
B.	E.
C.	

<b>EVALUATOR CERTIFICATION</b> I hereby certify that I have evaluated all of the persons or firms and ranked them based on the Evaluation Criteria listed above and no other criteria were used.	
<b>EVALUATOR NAME:</b>	<b>DATE:</b>
<b>EVALUATOR SIGNATURE:</b>	



**SE-717**

**DESIGN-BUILD SELECTION COMMITTEE SUMMARY - RFP**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

COMMITTEE MEMBERS <i>(Insert Names of Voting Members)</i>		RANKING OF FIRMS				
		A	B	C	D	E
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
<b>TOTAL</b>						
<b>RANKING BY COMMITTEE (1,2,3)</b>						

FIRMS SUBMITTING PROPOSAL	
A.	D.
B.	E.
C.	

<b>SELECTION COMMITTEE CHAIR CERTIFICATION:</b> The Agency Selection Committee has reviewed the submittals of the prequalified firms in response to the <i>Request for Proposals</i> and ranked all firms in accordance with the criteria set forth in the <i>Request for Proposals</i> .	
COMMITTEE CHAIR NAME:	DATE:
COMMITTEE CHAIR TITLE:	
COMMITTEE CHAIR SIGNATURE:	

**SE-760  
REQUEST FOR CONCURRENCE IN POSTING NOTICE OF INTENT TO AWARD  
DESIGN-BUILD CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

The above named Agency hereby requests approval from the Office of State Engineer (OSE) to post a Notice of Intent to Award a contract to the Contractor named and for the amount stated below. If the Agency does not receive written objection from OSE within 5 business days after OSE’s receipt of this Request and the documentation required below, the Agency may post the attached Notice of Intent to Award at the location stated in the Solicitation.

**INTENDED AWARDEE (Contractor):** \_\_\_\_\_

**AWARD AMOUNT: \$** \_\_\_\_\_

**DATE SELECTION WAS MADE:** \_\_\_\_\_

**AGENCY CERTIFICATION AND REQUEST**

I hereby certify that the Agency has conducted this solicitation in accordance with the requirements of the SC Consolidated Procurement Code and the *Manual for Planning and Execution of State Permanent Improvements, Part II* and that the proposed expenditure is within the authorized scope and budget for this Project. I further certify that the Agency has authorized, unencumbered funds available for obligation to this contract. I hereby request the approval of the Office of State Engineer to post a Notice of Intent to Award a contract for Design-Build services in support of the above-named Project.

**AGENCY SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**APPROVED**

**OSE PROJECT MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**NOT APPROVED**

**OSE PROJECT MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**REASONS FOR DISAPPROVAL OF REQUEST:** \_\_\_\_\_

**SUBMIT THE FOLLOWING DOCUMENTS TO OSE:**

1. SE-760 signed by the Agency.
2. Copy of the SE-711 and the SE-712
3. Copy of signed SE-714 for each Committee member
4. Copy of all SE-715s and the SE-717s
5. Copy of Agency Head approval of the Committee recommended firm
6. Copy of proposed Notice of Intent to Award DB Contract (SE-770).
7. Copy of the Contract to be executed by both parties

**SE-770**

**NOTICE OF INTENT TO AWARD DESIGN-BUILD CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**POSTING DATE:** \_\_\_\_\_

**TO ALL PROPOSERS:**

Unless stayed by protest or canceled, the Agency intends to enter into a contract as noted below:

**NAME OF CONTRACTOR:** \_\_\_\_\_

**AWARD AMOUNT: \$** \_\_\_\_\_

**DATE SELECTION WAS MADE:** \_\_\_\_\_

Contractor should not incur any costs associated with the contract prior to receipt of a contract from the Agency for execution. Contractor should not perform any work prior to receipt of the Agency’s written Notice to Proceed. The State assumes no liability for any expenses incurred by the Contractor prior to issuance of a Notice to Proceed.

**RIGHT TO PROTEST (SC Code § 11-35-4210)**

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of this contract may protest within ten (10) days of the date the Notice of Intent to Award is posted. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided.

PROTEST - CPO ADDRESS - OSE: Any protest must be addressed to the Chief Procurement Officer for Construction, Office of State Engineer, and submitted in writing (a) by email to: [protest-ose@mso.sc.gov](mailto:protest-ose@mso.sc.gov), (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the e-mail address from which you sent your protest.

\_\_\_\_\_  
*(Agency Procurement Officer Signature)*

\_\_\_\_\_  
*(Print or Type Name)*

**INSTRUCTIONS TO THE AGENCY:**

1. Post a copy of this form at the location specified in the Solicitation.
2. Send a copy of this form to all proposers and OSE.

**SE-771**  
**DESIGN DOCUMENT TRANSMITTAL FORM DESIGN-BUILD**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**TO:** \_\_\_\_\_  
*(OSE Project Manager)*

**CC:** \_\_\_\_\_  
*(Agency Project Manager)*

**FROM:** \_\_\_\_\_  
*(Person's Name)*

\_\_\_\_\_  
*(Firm Name, if applicable)*

**DATE:** \_\_\_\_\_

Transmitted herein are \_\_\_\_\_ copies of the following documents for the above referenced project as required by Chapter 5, of the *Manual for Planning and Execution of State Permanent Improvement—Part II* (check applicable items):

		<input type="checkbox"/> <b>SCHEMATIC DESIGN DOCUMENTS</b>	<input type="checkbox"/> <b>DESIGN DEVELOPMENT DOCUMENTS</b> <i>(if applicable)</i>	<input type="checkbox"/> <b>CONSTRUCTION DOCUMENTS</b>
1.	Site Plans	<input type="checkbox"/>	<input type="checkbox"/>	N/A
2.	Floor Plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Life Safety Plans	<input type="checkbox"/>	<input type="checkbox"/>	N/A
4.	Code Criteria (OSE Code Tables)	N/A	<input type="checkbox"/>	<input type="checkbox"/>
5.	ASHRAE 90.1 Worksheet	N/A	<input type="checkbox"/>	<input type="checkbox"/>
6.	Complete Set of Drawings & Project Manual	N/A	<input type="checkbox"/>	<input type="checkbox"/> (signed & sealed)
7.	Written responses to previous OSE Comments	N/A	<input type="checkbox"/>	<input type="checkbox"/>
8.	List of required Permits and Approvals	<input type="checkbox"/>	<input type="checkbox"/>	N/A
9.	Status of Required Permits and Approvals	N/A	<input type="checkbox"/>	<input type="checkbox"/>

**SE-780**

CHANGE ORDER NO.: \_\_\_\_\_

**CHANGE ORDER TO DESIGN-BUILD CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_ **CONTRACT DATE:** \_\_\_\_\_

**This Contract is changed as follows:** *(Insert description of change in space provided below)*

**ADJUSTMENTS IN THE CONTRACT SUM:**

1. Original Contract Sum:		\$
2. Change in Contract Sum by previously approved Change Orders:		
3. Contract Sum prior to this Change Order		\$ 0.00
4. Amount of this Change Order:		
5. New Contract Sum, including this Change Order:		\$ 0.00

**ADJUSTMENTS IN THE CONTRACT TIME:**

1. Original Substantial Completion Date:		
2. Sum of previously approved increases and decreases in Days:		Days
3. Change in Days for this Change Order		Days
4. New Substantial Completion Date:		

**CONTRACTOR ACCEPTANCE:**

**BY:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
*(Signature of Representative)*

**Print Name of Representative:** \_\_\_\_\_

**AGENCY ACCEPTANCE AND CERTIFICATION:**

**BY:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
*(Signature of Representative)*

**Print Name of Representative:** \_\_\_\_\_

Change is within Agency Construction Contract Change Order Certification of: \$ \_\_\_\_\_ Yes  No

**AUTHORIZED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(OSE Project Manager)*

**SUBMIT THE FOLLOWING TO OSE**

1. SE-780, fully completed and signed by the Contractor and Agency;
2. Detailed back-up information from the Contractor/Subcontractor(s) that justifies the costs and schedule changes shown.
3. If any item exceeds Agency certification, OSE will authorize the SE-780 and return to Agency.

**SE-790  
NOTICE TO PROCEED – DESIGN-BUILD CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**TO:** \_\_\_\_\_

*(Contractor's Name)*

**NOTICE:** Your Contract for the subject Project has been executed by the Agency, and you are hereby given Notice To Proceed with the Work of the Project.

The Date of Commencement is fixed below and shall be used in determining the initial date for Substantial Completion and for assessing Liquidated Damages, if any, set forth in the contract documents.

Failure to commence actual physical work on this Project within Fourteen (14) Days from the Date of Commencement will entitle the Agency to consider you in breach of this Contract. In this event, the Agency may withdraw this Notice to Proceed and terminate the Contract in accordance with the Contract Documents.

**DATE OF NOTICE TO PROCEED:** \_\_\_\_\_

**DATE OF COMMENCEMENT:** \_\_\_\_\_

*(Should be no less than 7 days after Date of Notice To Proceed)*

**INITIAL CONTRACT TIME:** \_\_\_\_\_ **days**

**INITIAL DATE FOR SUBSTANTIAL COMPLETION:** \_\_\_\_\_

**LIQUIDATED DAMAGES:**

Liquidated Damages will be assessed in the amount of \$ \_\_\_\_\_ per day in accordance with the Contract Documents.

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

*(Signature of Agency Representative)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

Complete this form and send to the Contractor, with a copy sent to OSE

SE-510

Permit No. \_\_\_\_\_

PERMIT TO DEVELOP IN A FLOOD HAZARD AREA

The undersigned hereby makes application for a permit to develop in a designated flood hazard area. The work to be performed is described below and in attachments hereto. (Attach all information necessary to show compliance). The undersigned agrees that all such work shall be done in accordance with the requirements of the Governor's Executive Order on Floodplain Management, 44 CFR Parts 59-77 and with all other applicable local, state and federal regulations. All other required Federal and/or State permits/certifications are attached.

Form with fields: State Project Name (If Applicable), State Project Number (If Applicable), Permit Holder's (Agency's) Name, Permit Holder's (Agency's) Address, Site Address, Tax and Parcel Map Numbers, Permit Holder's Telephone Number

A. Description of Work: 1. Proposed Development Description (New Construction, Alteration or Repair, etc.), 2. Size and location of Development, 3. Type of Construction (New Residential, Renovation, etc.)

B. Non-Residential Construction: 1. Flood Protection Method (Floodproofing, Elevation, etc.), 2. Check appropriate certification required in Section E.

C. Alterations, additions or improvements to an existing structure: 1. What is the estimated market value of the existing structure? \$\_\_\_\_\_, 2. What is the cost estimate for the proposed construction? \$\_\_\_\_\_. NOTE: If the cost of proposed construction equals or exceeds 50% of the market value of the structure, then the substantial improvement requirements shall apply.

D. Flood Map and Elevation Information: 1. Community Number \_\_\_\_\_, 2. Panel Number: \_\_\_\_\_, 3. Zone: \_\_\_\_\_, 4. Base Flood Elevation at Site: \_\_\_\_\_ ft. msl., 5. Required Lowest Floor Elevation (including Basement, if any): \_\_\_\_\_ ft. msl., 6. If the structure is to be floodproofed, the required floodproofing elevation is: \_\_\_\_\_ ft. msl., 7. Elevation to which all attendant utilities, including all heating, duct work, and electrical equipment will be installed or floodproofed: \_\_\_\_\_ ft. msl.

E. Check any certifications applicable to this project. Submit the applicable certifications within the specified time frame. [List of certification options with checkboxes]

APPLICANT'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

The Office of State Engineer, having reviewed the above information and the supporting documentation, has determined that the proposed work complies with the State's "Building Standards in Flood Plain Areas". The undersigned hereby authorizes work to be performed under the following conditions:

GENERAL CONDITIONS

- 1. All work shall be done in accordance with the requirements of the Governor's Executive Order on Floodplain Management, 44 CFR Parts 59-77 and with all other applicable local, state, and federal regulations, including all required Federal and/or State permits/certifications, which are attached to and are a part of this permit.
2. The plans, specifications and other documents submitted by the applicant are incorporated in and made a part of this permit. The work shall be performed exactly as shown on the approved plans and specifications. Deviations of any nature are expressly prohibited without prior authorization of this office.
3. This permit does not lessen the applicant's requirement to obtain Federal, State, or local assent required by law for the activity authorized herein.

SPECIAL CONDITIONS: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

(State Engineer)

cc: State Floodplain Coordinator, SCDNR
OSE Project Manager

OSE PM: \_\_\_\_\_

**SE-550**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_

**CERTIFICATION**

I hereby certify that  **FULL** or  **PARTIAL** Substantial Completion has been accomplished as defined in the Project Manual and in conformance with the requirements of the Contract and the *Manual for Planning and Execution of Permanent Improvement Projects-Part II*. This certification declares that:

- A. The work that remains to be completed after full or partial substantial completion is minor in scope and nature;
- B. The remaining work is not disruptive to the function of the facility occupants and is limited to minor items required to finalize the project;
- C. The Contractor's Punch List and all attachments thereto have been reviewed and any exceptions are noted; and
- D. The composite A/E's Punch List is attached, with the status of each item noted.

**DATE FOR FULL OR PARTIAL SUBSTANTIAL COMPLETION:** \_\_\_\_\_

*(This is also the date for the commencement of warranties required by the Contract.)*

**NUMBER OF DAYS ALLOWED UNTIL FINAL COMPLETION:** \_\_\_\_\_

**SPECIAL CONDITIONS OR STIPULATIONS CONCERNING THE COMPLETION OF PUNCH-LIST ITEMS OR EXPLANATIONS FOR PARTIAL SUBSTANTIAL COMPLETION:**

\_\_\_\_\_

**A/E CERTIFICATION DOES NOT CONFER APPROVAL TO OCCUPY/USE THE FACILITY**

**A/E CERTIFICATION**

**BY:** \_\_\_\_\_  
*(Signature of A/E Representative)*

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE A/E:**

1. Forward the SE-550 and Contractor's Punch List to the Agency for review and approval.

**AGENCY ACCEPTANCE**

**BY:** \_\_\_\_\_  
*(Signature of Agency Representative)*

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Forward the SE-550 to OSE.
2. Schedule with OSE and other authorities having jurisdiction for a Certificate of Occupancy/Use Permit Inspection.



**SE-560  
CERTIFICATE OF FINAL COMPLETION**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_

**CONTRACTOR'S NOTIFICATION AND CERTIFICATION**

I hereby notify the A/E and the Agency that Contract Work for the above Project is or will achieve Final Completion, as defined in the Project Manual and in conformance with the requirements of the Contract and the *Manual for Planning and Execution of Permanent Improvement Projects-Part II*, on the date shown below. This certification declares that:

- A. All items of the punch-list and all items required by the Construction Documents have been completed;
- B. All Work is in conformance with the Contract Documents; and
- C. All other requirements of the Contract related to Final Completion have been accomplished, to include delivery of all operational and maintenance manuals, record drawings, maintenance training, warrantee certificates and start up activities.

**BY:** \_\_\_\_\_  
*(Signature of Contractor Representative)*

**PRINT NAME OF CONTRACTORS REPRESENTATIVE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE FOR FINAL COMPLETION INSPECTION:** \_\_\_\_\_

**A/E CERTIFICATION AND AGENCY ACCEPTANCE OF FINAL COMPLETION**

The A/E and Agency agree that the Project is complete and the Final Inspection of the Project was acceptable. Final Completion of the Project is hereby declared to be effective on the date stated below.

**DATE OF FINAL COMPLETION:** \_\_\_\_\_

**SPECIAL CONDITIONS OR STIPULATIONS CONCERNING FINAL COMPLETION:**  
\_\_\_\_\_  
\_\_\_\_\_

**THIS FORM DOES NOT CONFER PERMISSION TO OCCUPY/USE THE FACILITY**

**A/E CERTIFICATION**

**BY:** \_\_\_\_\_  
*(Signature of A/E Representative)*

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**AGENCY ACCEPTANCE**

**BY:** \_\_\_\_\_  
*(Signature of Agency Representative)*

**PRINT NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**INSTRUCTIONS TO THE AGENCY:**

1. Forward a copy of the completed SE-560 and any attachments to OSE.

SE-580

# BUILDING / CONSTRUCTION PERMIT

State of South Carolina  
Office of State Engineer

AGENCY: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

PROJECT ADDRESS: \_\_\_\_\_

PROJECT DESCRIPTION: \_\_\_\_\_

GOVERNING CODE & EDITION: \_\_\_\_\_

Occupancy Classification: \_\_\_\_\_ N/A

Construction Type: \_\_\_\_\_ N/A

Building New/Renovation Square Footage: \_\_\_\_\_ N/A

Is Building Sprinklered: Yes  No  N/A

ARCHITECT/ENGINEER OF RECORD: \_\_\_\_\_

PRIME CONTRACTOR: \_\_\_\_\_

INSPECTION CONTRACTOR: \_\_\_\_\_

**NO OCCUPANCY/USE SHALL OCCUR PRIOR TO ISSUANCE OF THE  
CERTIFICATE OF OCCUPANCY/USE**

**AGENCY CERTIFICATION:**

I hereby certify and agree as follows:

1. I have read the above information and it is true and correct;
2. I will comply with all State, Federal and local Laws and Regulations regulating the use of land and structures and the construction of structures; and
3. I will perform only the work described above at the property indicated above.
4. I have submitted the Inspection/Material Testing Order (SE-955) and the Statement of Responsibilities for Special Inspections (SE-962) for this project to OSE.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
*(Signature of Agency Project Coordinator)*

PRINT NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

<b>APPROVED:</b> _____ <i>(State Engineer)</i>	<b>DATE:</b> _____  OSE PM: _____
---	---

SE-585

# CERTIFICATE OF OCCUPANCY / USE

## State of South Carolina Office of State Engineer

FULL       PARTIAL (See Special Conditions)       TEMPORARY (See Dates Below)

AGENCY: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

PROJECT ADDRESS: \_\_\_\_\_

PROJECT DESCRIPTION: \_\_\_\_\_

APPROVED DATE OF BUILDING/CONSTRUCTION PERMIT (SE-580): \_\_\_\_\_

ARCHITECT/ENGINEER OF RECORD: \_\_\_\_\_

PRIME CONTRACTOR: \_\_\_\_\_

INSPECTION CONTRACTOR: \_\_\_\_\_

**AGENCY CERTIFICATION:**

I hereby certify and agree as follows:

1. All of the above information is true and correct;
2. I have complied with all State, Federal and local Laws and Regulations regulating the use of land and structures and the construction of structures; and
3. Attached is the Project Inspection/Material Testing Deficiency Log (SE-966) that has been certified by the 3<sup>rd</sup> party inspector.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
*(Signature of Agency Project Coordinator)*

PRINT NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

Permission to occupy the facility is hereby granted, subject to the following conditions:

TEMPORARY OCCUPANCY DATES: From: \_\_\_\_\_ To: \_\_\_\_\_ N/A

SPECIAL CONDITIONS CONCERNING FULL OCCUPANCY OR EXPLANATIONS FOR PARTIAL OCCUPANCY:  
\_\_\_\_\_

**APPROVED:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(State Engineer)*

OSE PM: \_\_\_\_\_

# SERVICE LEVEL AGREEMENT BETWEEN AGENCY AND OSE CONSTRUCTION MANAGEMENT AT RISK

AGENCY: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

ORIGINAL AGREEMENT DATE: \_\_\_\_\_

REVISION #: \_\_\_\_\_ DATE: \_\_\_\_\_ REVISION #: \_\_\_\_\_ DATE: \_\_\_\_\_

REVISION #: \_\_\_\_\_ DATE: \_\_\_\_\_ REVISION #: \_\_\_\_\_ DATE: \_\_\_\_\_

REVISION #: \_\_\_\_\_ DATE: \_\_\_\_\_ REVISION #: \_\_\_\_\_ DATE: \_\_\_\_\_

COMMENTS: \_\_\_\_\_

The purpose of this SLA is to establish milestones and deliverables for each anticipated activity in the project development and procurement process for the above state project. Both Parties agree to abide by the scheduled timeframe below. If the timeframe is not adhered to, then a new schedule must be mutually agreed upon and implemented. If the agency fails to meet timeframes set, the job may be delayed as it will have to be rescheduled according to the OSE Project Manager's available time.

1.	OSE Project Manager	Name: _____ Phone: _____ Email: _____
2.	Agency Project Manager	Name: _____ Phone: _____ Email: _____
3.	Agency Program/End-User	Name: _____ Phone: _____ Email: _____
4.	Agency requests approval of Alternative Delivery Method from State Engineer	Date: _____
5.	Phase I PIP Approval (A-1 approval date)	Date: _____
6.	OSE advertises for A/E Services in SCBO	Date: _____
7.	Agency conducts interviews for A/E Services	Date: _____
8.	Agency requests authority to execute Professional Services Contract	Date: _____
9.	Agency submits CM-R Selection Plan to OSE for approval	Date: _____
10.	OSE approves CM-R Selection Plan	Date: _____
11.	Selection Committee assembles CM-R RFQ and advertisement.	Date: _____
12.	OSE advertises RFQ in SCBO	Date: _____
13.	Agency conducts Pre-qualification Conference	Date: _____ N/A <input type="checkbox"/>
14.	Deadline for receipt of qualifications per the RFQ	Date: _____
15.	Selection Committee assembles RFP package	Date: _____

# SERVICE LEVEL AGREEMENT BETWEEN AGENCY AND OSE CONSTRUCTION MANAGEMENT AT RISK

16.	Selection Committee prequalifies firms from RFQ submittals	Date: _____
17.	Agency Project Manager sends RFP package to prequalified firms	Date: _____
18.	Pre-proposal Conference for prequalified firms	Date: _____ N/A <input type="checkbox"/>
19.	Deadline for receipt of proposals per the RFP	Date: _____
20.	Agency Project Manager evaluates proposals for responsiveness	Date: _____
21.	Selection Committee reviews proposals and determines if interviews are necessary	Date: _____
22.	If necessary, Selection Committee interviews and ranks prequalified firms	Date: _____
23.	Selection Committee sends Agency Head recommendation of selected firm for approval	Date: _____
24.	Agency Head approves Selection Committee's recommendation	Date: _____
25.	Agency completes negotiations and requests concurrence from OSE to post Notice of Intent to Award	Date: _____
26.	OSE reviews proposed award package and concurs with the posting of the Notice of intent to Award	Date: _____
27.	Agency posts Notice of Intent to Award	Date: _____
28.	A/E submits Schematic Design Documents to OSE for review	Date: _____
29.	OSE, Agency, A/E and CM-R jointly review Schematic Design Documents	Date: _____
30.	OSE sends Schematic Design comments to Agency	Date: _____ N/A <input type="checkbox"/>
31.	Phase II PIP Approval (A-1 approval date)	Date: _____
32.	Agency and CM-R agree on GMP (Note: GMP may be phased)	Date: _____
33.	A/E submits properly completed Construction Documents to OSE for review	Date: _____
34.	OSE sends Construction Documents comments to Agency / A/E	Date: _____
35.	Agency sends Building/Construction Permit to OSE for approval	Date: _____
36.	OSE sends approved Building/Construction Permit to Agency	Date: _____

# SERVICE LEVEL AGREEMENT BETWEEN AGENCY AND OSE CONSTRUCTION MANAGEMENT AT RISK

37.	Agency executes Exhibit "A" of the CM-R contract to begin construction	Date: _____
38.	CM-R/Contractor begins Construction	Date: _____
39.	Agency and A/E schedule Substantial Completion and Certificate of Occupancy/Use Inspections with OSE agreement	Date: _____
40.	Agency sends executed Certificate of Substantial Completion to OSE	Date: _____
41.	Agency sends Certificate of Occupancy/Use to OSE for approval	Date: _____
42.	OSE sends approved Certificate of Occupancy/Use to Agency	Date: _____
43.		
44.		

\_\_\_\_\_  
*OSE Project Manager Name (Print)*

\_\_\_\_\_  
*Agency Project Manager Name (Print)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

# SERVICE LEVEL AGREEMENT BETWEEN AGENCY AND OSE DESIGN-BID-BUILD

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**ORIGINAL AGREEMENT DATE:** \_\_\_\_\_

**REVISION #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_ **REVISION #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**REVISION #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_ **REVISION #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**REVISION #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_ **REVISION #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**COMMENTS:** \_\_\_\_\_

The purpose of this SLA is to establish milestones and deliverables for each anticipated activity in the project development and procurement process for the above state project. Both Parties agree to abide by the scheduled timeframe below. If the timeframe is not adhered to, then a new schedule must be mutually agreed upon and implemented. If the agency fails to meet timeframes set, the job may be delayed as it will have to be rescheduled according to the OSE Project Manager’s available time.

<b>1.</b>	<b>OSE Project Manager</b>	<b>Name:</b> _____ <b>Phone:</b> _____ <b>Email:</b> _____
<b>2.</b>	<b>Agency Project Manager</b>	<b>Name:</b> _____ <b>Phone:</b> _____ <b>Email:</b> _____
<b>3.</b>	<b>Agency Program/End-User</b>	<b>Name:</b> _____ <b>Phone:</b> _____ <b>Email:</b> _____
<b>4.</b>	<b>Phase I PIP Approval (A-1 approval date)</b>	<b>Date:</b> _____
<b>5.</b>	<b>OSE advertises for A/E Services in SCBO</b>	<b>Date:</b> _____ N/A <input type="checkbox"/>
	<b>If N/A, method of obtaining A/E Services</b>	_____
<b>6.</b>	<b>Agency conducts interviews for A/E Services</b>	<b>Date:</b> _____ N/A <input type="checkbox"/>
<b>7.</b>	<b>Agency requests authority to execute Professional Services Contract</b>	<b>Date:</b> _____ N/A <input type="checkbox"/>
<b>8.</b>	<b>OSE, Agency, and A/E jointly review Schematic Design Documents</b>	<b>Date:</b> _____
<b>9.</b>	<b>OSE sends Schematic Design comments to Agency</b>	<b>Date:</b> _____ N/A <input type="checkbox"/>
<b>10.</b>	<b>Phase II PIP Approval (A-1 approval date)</b>	<b>Date:</b> _____ N/A <input type="checkbox"/>
<b>11.</b>	<b>A/E sends properly completed Construction Documents to OSE for review</b>	<b>Date:</b> _____
<b>12.</b>	<b>OSE sends Construction Documents comments to Agency / A/E</b>	<b>Date:</b> _____

# SERVICE LEVEL AGREEMENT BETWEEN AGENCY AND OSE DESIGN-BID-BUILD

13.	OSE Advertises Project for Bid in SCBO	Date: _____
14.	Pre-Bid Conference	Date: _____ N/A <input type="checkbox"/>
15.	Bid Opening	Date: _____
16.	Agency makes responsiveness and responsibility determination of lowest responsive and responsible bidder	Date: _____
17.	Agency requests concurrence from OSE to post Notice of Intent to Award	Date: _____
18.	OSE reviews proposed award package (SE-360) and concurs with the posting of the Notice of intent to Award	Date: _____
19.	Agency posts Notice of Intent to Award	Date: _____
20.	Agency sends Building/Construction Permit to OSE for approval	Date: _____
21.	OSE sends approved Building/Construction Permit to Agency	Date: _____
22.	Agency issues Notice to Proceed to Contractor and sends copy to OSE	Date: _____
23.	Agency and A/E schedule Substantial Completion and Certificate of Occupancy/Use Inspections with OSE agreement	Date: _____
24.	A/E declares Substantial Completion	Date: _____
25.	Agency sends executed Certificate of Substantial Completion to OSE	Date: _____
26.	Agency sends Certificate of Occupancy/Use to OSE for approval	Date: _____
27.	OSE sends approved Certificate of Occupancy/Use to Agency	Date: _____
28.		
29.		

\_\_\_\_\_  
*OSE Project Manager Name (Print)*

\_\_\_\_\_  
*Agency Project Manager Name (Print)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*



# SERVICE LEVEL AGREEMENT BETWEEN AGENCY AND OSE DESIGN – BUILD (DB)

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**ORIGINAL AGREEMENT DATE:** \_\_\_\_\_

**REVISION #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_ **REVISION #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**REVISION #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_ **REVISION #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**REVISION #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_ **REVISION #:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**COMMENTS:** \_\_\_\_\_

The purpose of this SLA is to establish milestones and deliverables for each anticipated activity in the project development and procurement process for the above state project. Both Parties agree to abide by the scheduled timeframe below. If the timeframe is not adhered to, then a new schedule must be mutually agreed upon and implemented. If the agency fails to meet timeframes set, the job may be delayed as it will have to be rescheduled according to the OSE Project Manager’s available time.

<b>1.</b>	<b>OSE Project Manager</b>	<b>Name:</b> _____ <b>Phone:</b> _____ <b>Email:</b> _____
<b>2.</b>	<b>Agency Project Manager</b>	<b>Name:</b> _____ <b>Phone:</b> _____ <b>Email:</b> _____
<b>3.</b>	<b>Agency Program/End-User</b>	<b>Name:</b> _____ <b>Phone:</b> _____ <b>Email:</b> _____
<b>4.</b>	<b>Agency requests approval of Alternative Delivery Method from State Engineer</b>	<b>Date:</b> _____
<b>5.</b>	<b>Phase I PIP Approval (A-1 approval date)</b>	<b>Date:</b> _____
<b>6.</b>	<b>OSE advertises for A/E Services in SCBO, if any (criteria/program development, etc.)</b>	<b>Date:</b> _____ N/A <input type="checkbox"/>
<b>7.</b>	<b>Agency conducts interviews for A/E Services</b>	<b>Date:</b> _____ N/A <input type="checkbox"/>
<b>8.</b>	<b>Agency requests authority to execute Professional Services Contract</b>	<b>Date:</b> _____ N/A <input type="checkbox"/>
<b>9.</b>	<b>Agency submits DB Selection Plan to OSE for approval</b>	<b>Date:</b> _____
<b>10.</b>	<b>OSE approves DB Selection Plan</b>	<b>Date:</b> _____
<b>11.</b>	<b>Selection Committee assembles DB RFQ and advertisement.</b>	<b>Date:</b> _____ N/A <input type="checkbox"/>
<b>12.</b>	<b>OSE advertises RFQ in SCBO</b>	<b>Date:</b> _____ N/A <input type="checkbox"/>
<b>13.</b>	<b>Agency conducts Pre-qualification Conference</b>	<b>Date:</b> _____ N/A <input type="checkbox"/>
<b>14.</b>	<b>Deadline for receipt of qualifications per the RFQ</b>	<b>Date:</b> _____ N/A <input type="checkbox"/>
<b>15.</b>	<b>Selection Committee assembles RFP package</b>	<b>Date:</b> _____

## SERVICE LEVEL AGREEMENT BETWEEN AGENCY AND OSE DESIGN – BUILD (DB)

16.	OSE advertises RFP in SCBO	Date: _____ N/A <input type="checkbox"/>
17.	Selection Committee shortlists firms	Date: _____
18.	Agency Project Manager sends RFP package to shortlisted firms	Date: _____ N/A <input type="checkbox"/>
19.	Pre-proposal Conference for shortlisted firms	Date: _____ N/A <input type="checkbox"/>
20.	Deadline for receipt of proposals per the RFP	Date: _____
21.	Agency Project Manager evaluates proposals for responsiveness	Date: _____
22.	Selection Committee reviews proposals and determines if interviews are necessary	Date: _____
23.	If necessary, Selection Committee interviews and ranks shortlisted firms	Date: _____ N/A <input type="checkbox"/>
24.	Selection Committee sends Agency Head recommendation for approval	Date: _____
25.	Agency Head approves Selection Committee's recommendation	Date: _____
26.	Agency completes negotiations and requests concurrence from OSE to post Notice of Intent to Award	Date: _____
27.	OSE reviews proposed award package and concurs with the posting of the Notice of intent to Award	Date: _____
28.	Agency posts Notice of Intent to Award	Date: _____
29.	DB firm submits Schematic Design Documents to OSE for review	Date: _____
30.	OSE, Agency and DB firm jointly review Schematic Design Documents	Date: _____
31.	OSE sends Schematic Design comments to Agency	Date: _____ N/A <input type="checkbox"/>
32.	Phase II PIP Approval (A-1 approval date)	Date: _____
33.	DB firm submits properly completed Construction Documents to OSE for review	Date: _____
34.	OSE sends Construction Documents comments to Agency / DB firm	Date: _____
35.	Agency sends Building/Construction Permit to OSE for approval	Date: _____
36.	OSE sends approved Building/Construction Permit to Agency	Date: _____

# SERVICE LEVEL AGREEMENT BETWEEN AGENCY AND OSE DESIGN – BUILD (DB)

37.	DB contractor begins Construction	Date: _____
38.	Agency and DB firm schedule Substantial Completion and Certificate of Occupancy/Use Inspections with OSE agreement	Date: _____
39.	Agency sends executed Certificate of Substantial Completion to OSE	Date: _____
40.	Agency sends Certificate of Occupancy/Use to OSE for approval	Date: _____
41.	OSE sends approved Certificate of Occupancy/Use to Agency	Date: _____
42.		
43.		

\_\_\_\_\_  
*OSE Project Manager Name (Print)*

\_\_\_\_\_  
*Agency Project Manager Name (Print)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

# MMO/OSE - 102 JUSTIFICATION FOR SOLE SOURCE PROCUREMENT

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

Based upon the following determination, the proposed procurement action described below is being procured pursuant to the authority of SC Code § 11-35-1560 and SC Regulation 19-445.2105

This Agency proposes to procure:

\_\_\_\_\_ (1)

as a Sole Source Procurement from:

\_\_\_\_\_ (2)

On the basis of:

\_\_\_\_\_ (3)

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

*(Signature of Authorized Agency Representative)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

- NOTES:
1. Enter description of goods or services to be procured.
  2. Enter name of sole source contractor.
  3. Enter the determination and basis for sole source procurement.

**THE DRUG FREE WORK PLACE ACT APPLIES TO ALL SOLE SOURCE PROCUREMENTS OF \$50,000 OR GREATER.**

# MMO/OSE - 103 JUSTIFICATION FOR EMERGENCY PROCUREMENT

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

Based upon the following determination, the proposed procurement action described below is being procured pursuant to the authority of SC Code § 11-35-1570 and SC Regulation 19-445.2110.

This Agency proposes to procure:

\_\_\_\_\_

(1)

as an Emergency Procurement from:

\_\_\_\_\_

(2)

The basis for this emergency determination and the reason no other vendor is suitable is:

\_\_\_\_\_

(3)

\_\_\_\_\_

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

*(Signature of Authorized Agency Representative)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

\_\_\_\_\_

- NOTES:
1. Enter description of goods or services to be procured.
  2. Enter name of emergency contractor.
  3. Enter the determination and basis for emergency procurement.

**THE DRUG FREE WORK PLACE ACT APPLIES TO ALL EMERGENCY PROCUREMENTS OF \$50,000 OR GREATER.**

# SE-290 PROFESSIONAL SERVICES PERFORMANCE EVALUATION

AGENCY: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

PROJECT LOCATION:  \_\_\_\_\_

PROJECT TYPE / COMPLEXITY (see code below):  \_\_\_\_\_

CONSTRUCTION BUDGET:  \_\_\_\_\_

A/E FIRM: \_\_\_\_\_

PROJECT MANAGER: \_\_\_\_\_

ADDRESS: Street/PO Box: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_ - \_\_\_\_\_

EMAIL: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

## CONSULTANTS

CIVIL: \_\_\_\_\_ ELECTRICAL: \_\_\_\_\_

STRUCTURAL: \_\_\_\_\_ FIRE PROTECTION: \_\_\_\_\_

MECHANICAL: \_\_\_\_\_ OTHER: \_\_\_\_\_

EVALUATED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

COMMENTS: \_\_\_\_\_

### DESIGN DEVELOPMENT PHASE

Category	Weight*	Rating	Max. Score	Score
Depth of Program Review/Understanding			0	0
Development & Analysis of Options			0	0
Document Quality & Coordination			0	0
Response to Review Comments			0	0
Estimate/Schedule Development & Update			0	0
Architectural Design Merit			0	0
Engineering Design Merit			0	0
<b>Total Design Development Phase Score</b>	N/A	N/A	0	0

*Note: Do not fill in the Score columns of this form. They will be filled automatically when data is entered into the database.  
\*Weight factors (1 thru 10) are to be assigned by Agency based on the needs of the specific project --- Weight x Rating = Score*

## DESIGN DEVELOPMENT PHASE PERFORMANCE RATING

**0.00%**

#### Rating Scale

- 4 = Excellent
- 3 = Very Good
- 2 = Satisfactory
- 1 = Poor

#### Total Performance Rating Key

- 90 – 100% = Excellent
- 70 – 89% = Very Good
- 40 – 69% = Satisfactory
- <40% = Unacceptable

#### Project Type/Complexity

- 1 = Complex
- 2 = Addition/Remodel
- 3 = Major Engineering
- 4 = Standard
- 5 = Utilitarian
- 6 = Remedial

**SE-290  
PROFESSIONAL SERVICES PERFORMANCE EVALUATION**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**PROJECT LOCATION:** \_\_\_\_\_

**PROJECT TYPE / COMPLEXITY (see code below):** \_\_\_\_\_

**CONSTRUCTION BUDGET:** \_\_\_\_\_

**A/E FIRM:** \_\_\_\_\_

**PROJECT MANAGER:** \_\_\_\_\_

**ADDRESS: Street/PO Box:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_ - \_\_\_\_\_

**EMAIL:** \_\_\_\_\_ **TELEPHONE:** \_\_\_\_\_

**CONSULTANTS**

**CIVIL:** \_\_\_\_\_ **ELECTRICAL:** \_\_\_\_\_

**STRUCTURAL:** \_\_\_\_\_ **FIRE PROTECTION:** \_\_\_\_\_

**MECHANICAL:** \_\_\_\_\_ **OTHER:** \_\_\_\_\_

**EVALUATED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**COMMENTS:** \_\_\_\_\_

**CONSTRUCTION DOCUMENTS/BID PHASE**

Category	Weight*	Rating	Max. Score	Score
Document Quality & Completeness			0	0
Document Coordination			0	0
Estimate Update/Level of Detail			0	0
Ability to Meet Schedules			0	0
Design Merit/Technical Detail			0	0
Responsiveness to Agency, OSE & Bidders			0	0
Communications			0	0
<b>Total Construction Documents/Bid Score</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>

*Note: Do not fill in the Score columns of this form. They will be filled automatically when data is entered into the database.  
\*Weight factors (1 thru 10) are to be assigned by Agency based on the needs of the specific project --- Weight x Rating = Score*

**CONSTRUCTION DOCUMENT/BID PHASE PERFORMANCE RATING**

**0.00%**

**Rating Scale**

- 4 = Excellent
- 3 = Very Good
- 2 = Satisfactory
- 1 = Poor

**Total Performance Rating Key**

- 90 – 100% = Excellent
- 70 – 89% = Very Good
- 40 – 69% = Satisfactory
- <40% = Unacceptable

**Project Type/Complexity**

- 1 = Complex
- 2 = Addition/Remodel
- 3 = Major Engineering
- 4 = Standard
- 5 = Utilitarian
- 6 = Remedial

**SE-290**

**PROFESSIONAL SERVICES PERFORMANCE EVALUATION**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**PROJECT LOCATION:** \_\_\_\_\_

**PROJECT TYPE / COMPLEXITY (see code below):** \_\_\_\_\_

**CONSTRUCTION BUDGET:** \_\_\_\_\_

**A/E FIRM:** \_\_\_\_\_

**PROJECT MANAGER:** \_\_\_\_\_

**ADDRESS: Street/PO Box:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_ - \_\_\_\_\_

**EMAIL:** \_\_\_\_\_ **TELEPHONE:** \_\_\_\_\_

**CONSULTANTS**

**CIVIL:** \_\_\_\_\_ **ELECTRICAL:** \_\_\_\_\_

**STRUCTURAL:** \_\_\_\_\_ **FIRE PROTECTION:** \_\_\_\_\_

**MECHANICAL:** \_\_\_\_\_ **OTHER:** \_\_\_\_\_

**EVALUATED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**COMMENTS:** \_\_\_\_\_

**TOTAL VALUE OF CHANGE ORDERS: \$** \_\_\_\_\_

**AGENCY – INITIATED CHANGE ORDERS (% OF ORIGINAL AWARD)** \_\_\_\_\_

**A/E – CAUSED CHANGE ORDERS (% OF ORIGINAL AWARD)** \_\_\_\_\_

**CONSTRUCTION PHASE**

Category	Weight*	Rating	Max. Score	Score
Participation in Meetings			0	0
Communications			0	0
Response to Request for Information			0	0
Observation & Reporting			0	0
Errors & Omissions Follow-up			0	0
As-Builts, Manuals & Schedules			0	0
<b>Total Construction Phase Score</b>	N/A	N/A	0	0

*Note: Do not fill in the Score columns of this form. They will be filled automatically when data is entered into the database.*

*\*Weight factors (1 thru 10) are to be assigned by Agency based on the needs of the specific project --- Weight x Rating = Score*

**CONSTRUCTION PHASE PERFORMANCE RATING**

**0.00%**

**Rating Scale**

- 4 = Excellent
- 3 = Very Good
- 2 = Satisfactory
- 1 = Poor

**Total Performance Rating Key**

- 90 – 100% = Excellent
- 70 – 89% = Very Good
- 40 – 69% = Satisfactory
- <40% = Unacceptable

**Project Type/Complexity**

- 1 = Complex
- 2 = Addition/Remodel
- 3 = Major Engineering
- 4 = Standard
- 5 = Utilitarian
- 6 = Remedial



**SE-295**

**ASSESSMENT OF DAMAGES - PROFESSIONAL SERVICES CONTRACT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**PERSON OR FIRM (A/E) ASSESSED**

**NAME:** \_\_\_\_\_

**ADDRESS: Street/PO Box:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_ - \_\_\_\_\_

**EMAIL:** \_\_\_\_\_ **TELEPHONE:** \_\_\_\_\_

**AGENCY CERTIFICATION**

I hereby certify that the Agency has reviewed the actions and work products provided by the A/E named above. In accordance with paragraph 4.9 of the *Manual for Planning and Execution of State Permanent Improvements, Part II*, I further certify that the Agency has determined it has reasonable cause to believe that the A/E has committed a negligent act or provided work products containing errors and omissions, described below, that have resulted in excess cost to the Agency. The Agency is hereby assessing damages against the A/E in the following amount:

**TOTAL DOLLAR AMOUNT ASSESSED:** \_\_\_\_\_

**BASIS FOR ASSESSMENT OF DAMAGES:** \_\_\_\_\_

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Agency Representative)*

**PRINT NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of A/E – not required)*

**ACKNOWLEDGED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(OSE Project Manager)*

**AGENCY INSTRUCTIONS**

1. Submit completed SE-295 to OSE
2. Send completed SE-295 to A/E

# SE-331 QUOTE FORM

Quotes shall be submitted only on SE-331.

**QUOTE SUBMITTED BY:** \_\_\_\_\_  
(Offeror's Name)

**QUOTE SUBMITTED TO:** \_\_\_\_\_  
(Owner's Name)

**FOR: PROJECT NAME:** \_\_\_\_\_  
**PROJECT NUMBER:** \_\_\_\_\_

## OFFER

- In response to the Invitation for Minor Construction Quotes, and in compliance with the Instructions to Bidders for the above-named Project, the undersigned **OFFEROR** proposes and agrees, if this Quote is accepted, to enter into a Contract with the Owner in the form included in the Solicitation Documents, and to perform all Work as specified or indicated in the Solicitation Documents, for the prices and within the time frames indicated in the Solicitation and in accordance with the other terms and conditions stated.
- Pursuant to Section 11-35-3030(1) of the SC Code of Laws, as amended, **OFFEROR** has submitted Bid Security as follows in the amount and form required by the Solicitation Documents:

Bid Bond with Power of Attorney       Electronic Bid Bond       Cashier's Check

(Bidder check one)

- OFFEROR** acknowledges the receipt of the following Addenda to the Solicitation documents and has incorporated the effects of said Addenda into its Quote (Bidder, check only boxes that apply.):

**ADDENDA:**       #1       #2       #3       #4       #5

- OFFEROR** agrees that this Quote, including all bid alternates, if any, may not be revoked or withdrawn after the opening of quotes, and shall remain open for acceptance for a period of **60** Days following the Quote Date, or for such longer period of time that **OFFEROR** may agree to in writing upon request of the Owner.
- OFFEROR** agrees that from the compensation to be paid, the Owner shall retain as Liquidated Damages the amount of \$\_\_\_\_\_ for each calendar day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted Contract Time for Substantial Completion, as provided in the Contract Documents.
- OFFEROR** herewith submits its offer to provide all labor, materials, equipment, tools of trades and labor, accessories, appliances, warranties and guarantees, and to pay all royalties, fee, permits, licenses and applicable taxes necessary to complete the following items of construction work:

**6.1 BASE QUOTE** \$ \_\_\_\_\_  
(enter BASE QUOTE in figures only)

**6.1.1 ALTERNATE NO. 1** \$ \_\_\_\_\_ to be **ADDED / DEDUCTED** from BASE QUOTE.  
(circle one)

**6.1.2 ALTERNATE NO. 2** \$ \_\_\_\_\_ to be **ADDED / DEDUCTED** from BASE QUOTE.  
(circle one)

**SC Contractor's License Number:** \_\_\_\_\_

**Classification(s) & Limits:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Telephone:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

This Quote is hereby submitted on behalf of the Offeror named above.

**BY:** \_\_\_\_\_  
(Signature of Offeror's Representative)

\_\_\_\_\_  
(Print or Type Name of Offeror's Representative)

**TITLE:** \_\_\_\_\_

# SE-350 QUESTIONNAIRE FOR CONTRACTORS

## Pursuant to Section 11-35-1810 of the SC Code of Laws, as amended

Before posting a Notice of Intent to Award a Contract, the Agency Procurement Officer must be satisfied that the prospective Contractor is responsible. Responsibility of the Contractor shall be ascertained for each Contract let by the State based upon full disclosure to the Agency Procurement Officer concerning the prospective contractor's capacity to meet the terms of the Contract and based upon past record of performance for similar contracts.

If a Bidder who otherwise would have been awarded a Contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Agency Procurement Officer. A copy of the determination shall be sent promptly to the non-responsible Contractor and to the Office of State Engineer. The final determination shall be made part of the Agency's procurement file and shall not be disclosed outside of the offices of the State Fiscal Accountability Authority, Attorney General, or Agency without the prior written consent of the Contractor.

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**PROJECT LOCATION:** \_\_\_\_\_

**AGENCY NAME:** \_\_\_\_\_

**NAME OF AGENCY CONTACT:** \_\_\_\_\_

**AGENCY MAILING ADDRESS:** \_\_\_\_\_

**AGENCY PHONE NUMBER:** \_\_\_\_\_ **AGENCY FAX NUMBER:** \_\_\_\_\_

### INSTRUCTIONS TO CONTRACTOR:

This questionnaire, accompanied by any other information requested by the Agency, must be completed fully and returned to the Agency within **SEVEN (7) DAYS** from date of receipt by the Contractor by registered mail. The Form SE-350 must be received by the Agency no later than the close of business on the seventh day. Incorrect or misleading statements in this questionnaire or failure to supply complete and accurate information as requested by the Agency with respect to the Agency's determination of your responsibility as a potential Contractor to the State of South Carolina may be grounds for a determination of non-responsibility with respect to said Contractor.

### INFORMATION REQUIRED:

1. Contractor's Name: \_\_\_\_\_
2. Contractor's Mailing Address and Telephone Number:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Contractor's Designated Project Manager and/or Project Superintendent:  
\_\_\_\_\_  
\_\_\_\_\_
4. Name of Person to Contact Regarding Questions: \_\_\_\_\_
5. What is the name and license number of the designated employee registered with the SC Contractor's Licensing Board? (*Indicate the name and license number of the organization's Qualifier.*)  
\_\_\_\_\_
6. List the name(s) of any organizations for which the designated employee registered with the SC Contactor's Licensing Board (the Qualifier) has been the Qualifier in the last 5 years.  
\_\_\_\_\_

# SE-350 QUESTIONNAIRE FOR CONTRACTORS

7. Is your organization registered as a Corporation with the SC Secretary of State? \_\_\_\_\_  
 If yes, provide the following information:

Date of Incorporation: \_\_\_\_\_ State of Incorporation: \_\_\_\_\_

<u>OFFICERS</u>	<u>NAME</u>	<u>YEARS IN POSITION</u>
President	_____	_____
Vice President	_____	_____
Secretary	_____	_____
Treasurer	_____	_____

8. Is your organization registered as a Partnership with the SC Secretary of State? \_\_\_\_\_  
 If yes, provide the following information (*attach additional sheets if required*):

Date Organized: \_\_\_\_\_ Type of Partnership: \_\_\_\_\_

<u>NAME OF GENERAL PARTNERS</u>	<u>TELEPHONE NUMBER</u>	<u>YEARS AS GENERAL PARTNER</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

9. Is your organization registered as a Sole Proprietorship with the SC Secretary of State? \_\_\_\_\_  
 If yes, how many years have you been in business? \_\_\_\_\_

10. Has your organization ever operated under other name(s)? \_\_\_\_\_  
 If yes, provide previous name(s), number of years the company operated under the previous name(s) and the previous State license number(s).

\_\_\_\_\_  
 \_\_\_\_\_

11. Furnish copies of your most recent certified financial statements. (*If you do not have certified financial statements, a statement of condition from your CPA showing verifiable payables and receivables must be provided.*)

12. Give the name, address and phone number of your certified public accountant:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

13. Give the name, address and phone number of your insurance company, including the agent's name:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

14. Give the name, address and phone number of your surety company:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

15. Give the name, address and phone number of your surety company's Representative (Attorney-in-fact):  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

# SE-350 QUESTIONNAIRE FOR CONTRACTORS

- 
16. What is your total bonding capacity? \_\_\_\_\_  
 What amount of your bonding capacity has been used as of the date of this bid? \_\_\_\_\_
17. List any other surety companies used in the last three (3) years with the name and phone number of the Representative:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
18. How many applications for performance and payment bonds have you made in the last three (3) years? \_\_\_\_\_  
 How many of these applications were not approved? \_\_\_\_\_  
 Provide the reasons for the denials, if any. *(Attach additional sheets if required)*  
 \_\_\_\_\_  
 \_\_\_\_\_
19. Have any claims been filed against you to any of your surety bond companies in the last five (5) years? \_\_\_\_\_  
 If yes, describe the nature of the claims and give the names of the surety companies, dates of each claim, identifying numbers of each claim, amounts of each claim, and the status of each claim. *(Attach additional sheets if required)*.  
 \_\_\_\_\_  
 \_\_\_\_\_
20. Has your organization ever been terminated on a contract for cause? \_\_\_\_\_ If yes, provide the name of the Owner, the date of the contract termination and describe the circumstances of the termination. *(Attach additional sheets if required)*.  
 \_\_\_\_\_  
 \_\_\_\_\_
21. Is your organization or any officer, director, partner, owner or qualifier currently suspended or debarred from doing federal, state or local government work for any reason? \_\_\_\_\_ If yes, name the individual and the reason for suspension or debarment. *(Attach additional sheets if required)*.  
 \_\_\_\_\_  
 \_\_\_\_\_
22. Provide the following information for **ALL** projects done by your firm **FOR THE STATE OF SOUTH CAROLINA** in the past five (5) years. *(Attach additional sheets if required)*.
- a. Name and Address of Agency:  
 \_\_\_\_\_  
 \_\_\_\_\_
  - b. Name and Location of Project:  
 \_\_\_\_\_  
 \_\_\_\_\_
  - c. State Project Number: \_\_\_\_\_
  - d. Name, Address and Phone Number of A/E Firm:  
 \_\_\_\_\_  
 \_\_\_\_\_
  - e. Name of A/E's Project Manager: \_\_\_\_\_
  - f. Name of your Job Superintendent: \_\_\_\_\_
  - g. Contract Award Date: \_\_\_\_\_ Date of Final Completion: \_\_\_\_\_
  - h. Project reached Substantial Completion on time: Yes  No   
 If no, number of days late: \_\_\_\_\_ Explain: \_\_\_\_\_
  - i. Project reached Final Completion on time: Yes  No   
 If no, number of days late: \_\_\_\_\_ Explain: \_\_\_\_\_
  - j. Contract dispute or failure to complete contract to agency satisfaction Yes  No  If yes, explain: \_\_\_\_\_

# SE-350 QUESTIONNAIRE FOR CONTRACTORS

k. Amount of Initial Award: \_\_\_\_\_ Final Contract Value: \_\_\_\_\_  
 Explain Difference, if any: \_\_\_\_\_

23. Provide the following information on projects done by your firm within the previous five (5) years for **Public Agencies or the Federal Government** which demonstrate your firm's expertise and the expertise of your proposed Project Manager and/or Project Superintendent in the work required by this contract. *(Attach additional sheets if required).*

a. Name, Address and Telephone Number of Owner:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

b. Name and Location of Project:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

c. Name, Address and Telephone Number of A/E Firm:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

d. Name of A/E's Project Manager: \_\_\_\_\_

e. Name of your Job Superintendent: \_\_\_\_\_

g. Contract Award Date: \_\_\_\_\_ Date of Final Completion: \_\_\_\_\_

h. Project reached Substantial Completion on time: Yes  No   
 If no, number of days late: \_\_\_\_\_ Explain: \_\_\_\_\_

i. Project reached Final Completion on time: Yes  No   
 If no, number of days late: \_\_\_\_\_ Explain: \_\_\_\_\_

j. Contract dispute or failure to complete contract to agency satisfaction Yes  No  If yes, explain: \_\_\_\_\_

k. Amount of Initial Award: \_\_\_\_\_ Final Contract Value: \_\_\_\_\_  
 Explain Difference, if any: \_\_\_\_\_

# SE-350 QUESTIONNAIRE FOR CONTRACTORS

I, the undersigned, do hereby declare that the foregoing statements are true and correct, as of the date indicated, and that those examining this document and any other information submitted in response to the request of the Agency have my permission to contact any or all of those parties listed in this questionnaire. I understand that this information is requested in furtherance of the Agency's obligations, under the South Carolina Consolidated Procurement Code, to evaluate and reach a determination of my responsibility as a prospective Contractor to the State of South Carolina. I hereby agree to waive any claim I have or may have against the State, the Agency, the A/E and their respective employees, and any individual named in the information submitted by me, arising out of or in connection with the administration, evaluation or recommendation of any bid.

## CONTRACTOR'S INFORMATION

\_\_\_\_\_  
*(Type or Print Name of Contractor)*

\_\_\_\_\_  
*(Type or Print Contractor's Address)*

\_\_\_\_\_  
*(Type or Print City, State and Zip Code)*

\_\_\_\_\_  
*(Phone Number)*

\_\_\_\_\_  
*(Type or Print Name)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

## CONTRACTOR'S LICENSE CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATIONS

\_\_\_\_\_  
*(S.C. Contractor's License Number)*

\_\_\_\_\_  
*(Classifications)*

\_\_\_\_\_  
*(Subclassifications)*

\_\_\_\_\_  
*(Limitations)*

**SE-397**

**CONSTRUCTION CONTRACTOR PERFORMANCE EVALUATION**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**PROJECT LOCATION:** \_\_\_\_\_

**PROJECT TYPE / COMPLEXITY (see code below):** \_\_\_\_\_

**ORIGINAL CONTRACT AWARD AMOUNT:** \_\_\_\_\_

**FINAL CONTRACT AMOUNT:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_

**PROJECT MANAGER / SUPERINTENDENT:** \_\_\_\_\_

**ADDRESS: Street/PO Box:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_ **TELEPHONE:** \_\_\_\_\_

**LISTED SUBCONTRACTORS**

**ELECTRICAL:** \_\_\_\_\_ **OTHER (list):** \_\_\_\_\_

**MECHANICAL:** \_\_\_\_\_ **OTHER (list):** \_\_\_\_\_

**PLUMBING:** \_\_\_\_\_ **OTHER (list):** \_\_\_\_\_

**EVALUATED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**COMMENTS:** \_\_\_\_\_

Category	Weight*	Rating	Score
Schedule	_____	_____	0
Quality	_____	_____	0
Cost	_____	_____	0
Safety	_____	_____	0
Relationship	_____	_____	0
Communication	_____	_____	0
Documentation	_____	_____	0
<b>Total Contractor Score</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>

*Note: Do not fill in the Score column on this form. It will be filled automatically when data is entered into the database. \*Weight factors (1 thru 10) are to be assigned by Agency based on the needs of the specific project -- Weight x Rating = Score*

**CONSTRUCTION PERFORMANCE RATING**

**0.00%**

**Rating Scale**

- 4 = Excellent
- 3 = Very Good
- 2 = Satisfactory
- 1 = Poor
- 0 = Unacceptable

**Total Performance Rating Key**

- 90 – 100% = Excellent
- 70 – 89% = Very Good
- 40 – 69% = Satisfactory
- <40% = Unacceptable

**Project Type/Complexity**

- 1 = Complex
- 2 = Addition/Remodel
- 3 = Major Engineering
- 4 = Standard
- 5 = Utilitarian
- 6 = Remedial



# **GUIDELINES FOR INSPECTIONS AND MATERIAL TESTING**

## **A. SCOPE:**

1. These guidelines are to aid the Agency and Design Professional(s) in understanding and implementing Chapter 1 inspections and Chapter 17 material testing and inspections per the International Building Code (IBC).
2. Chapter 1 inspections are required by Section 110 of the 2015 IBC and are performed by the Building Official, or his designee. Chapter 17 inspections are the detailed inspections of construction requiring the expertise of a Special Inspector in order to ensure compliance with the ICC Codes and the approved contract documents. Special inspections performed by a Special Inspector are above and beyond the Design Professional's regular construction observation visits per the requirements of the Design Contract.
3. For ease of understanding, Chapter 1 inspections shall be referred to as inspections, and are performed by the Building Official or his designee. Chapter 17 material testing and inspections shall be referred to as special inspections and are performed by the Special Inspector.

## **B. APPLICABILITY**

1. MATERIAL TESTING: As stated in the construction documents.
2. 2015 IBC CHAPTER 1 SECTION 110 - INSPECTIONS: These tests and inspections are required for state agency construction projects.
3. 2015 IBC CHAPTER 17: Per Section 1704.2, special inspections during construction on types of work listed in Section 1705 are in addition to the inspections identified in Section 110.
4. FIRE PROTECTION SYSTEMS:
  - a. All new fire protection system(s) shall be inspected and tested per International Fire Code (IFC) regardless of applicability of Special Inspections.
  - b. In the event any new fire protection system(s) is installed in an existing building, such fire protection system(s) shall be tested and inspected per the IFC.
  - c. In the event any existing fire protection system(s) is altered and/or modified, the fire protection system(s) shall be tested and inspected per the IFC.

## **C. PLANNING**

1. Agencies shall plan for and procure Chapter 1 inspections for all state construction projects.
2. Agencies should consider the possibility that Chapter 17 Special Inspections will be required for most state construction projects. If there is any doubt regarding the applicability of Special Inspections, the agency should contact their OSE Project Manager for assistance in the determination.
3. The Agency shall contract directly with an OSE-approved firm utilizing the statewide contract. (See paragraph E) For a list of approved firms, see [https://procurement.sc.gov/files/Copy%20of%20Inspections\\_Testing\\_Firms\\_050516%20updated%209.12.17.xls](https://procurement.sc.gov/files/Copy%20of%20Inspections_Testing_Firms_050516%20updated%209.12.17.xls)

## **D. CONTRACT DOCUMENTS:**

1. The contract documents must contain the STATEMENT OF SPECIAL INSPECTIONS, from the OSE Manual included in a Quality Control section of the project manual. A Statement of Special Inspections shall be completed by the design team to inform the Special Inspector and the construction contractor of the inspections that are required and who will be performing them.
2. The design team can require special inspections above and beyond what is required by code based on unusual project conditions. These special inspections must be approved by OSE.

## **E. PROCUREMENT OF INSPECTIONS AND SPECIAL INSPECTIONS**

OSE has entered into statewide term contracts for inspections and material testing services. Agencies should review and become familiar with the requirements of these contracts and the schedules of unit prices which can be viewed at <https://procurement.sc.gov/search/node/inspection> . The "Solicitation Document" is the form of the contract and the "Intent to Award" document is a listing of the contracted unit prices.

1. The Agency shall provide the selected Inspector with a set of the Bid Documents (complete plans, specifications, and any addenda issued during the bidding period). Using these documents, the Inspector shall determine the following:
  - a. The types of inspections/testing the ICC Codes requires and the number of hours necessary to perform each type of inspection;
  - b. The estimated cost of the inspection (hourly rate x hours required, or unit price);
  - c. Mileage, lodging and meal compensation; and
  - d. Any subcontracted services required and cost to agency for those services.

2. The Inspector shall enter this information along with all assumptions supporting these numbers into the Inspection/Material Testing Order Negotiation Worksheet (SE-955A) and submit it to the agency for review.
3. The Agency reviews the SE-955A and supporting documentation and then negotiates the tasks and associated man-hours as necessary with the Inspector. The OSE Project Manager is available to assist the agency in the review of the Inspector's proposal. The Owner completes and signs the Inspection/Material Testing Order (SE-955) and forwards a copy to the Inspector for his signature and to serve as a Notice to Proceed. Since the Inspector is under contract through the statewide Master Agreement contract, additional contract language is not required.

#### **F. AMENDING INSPECTION DELIVERY ORDERS**

1. If it becomes necessary to change the services of the Inspector during the construction period, the Agency and the Special Inspector should amend the Delivery Order by completing the Inspection/Material Testing Order Amendment Worksheet (SE-960A).
2. The Agency reviews the SE-960A and supporting documentation and negotiates the revision with the inspector. The Agency completes and signs the Inspection/Material Testing Order Amendment (SE-960) and forwards a copy to the Inspector for signature.
3. In accordance with SC Division of Procurement Services, Office of the State Engineer Version of AIA A201-2007 General Conditions of the Contract for Construction section 13.5.3, the construction contractor shall be responsible for the cost of inspections that are conducted without the agency's knowledge and for any increase in inspection cost due to inefficient scheduling or re-inspections. Any re-inspection charges applied to the contractor will be deducted from their final payment

#### **G. PROCESSING PAYMENT**

The Inspector should submit applications for payment to the Agency in a form acceptable to both parties. The Agency will review the Inspector's application for payment and accompanying back-up information in coordination with the Inspection/Testing Log (SE-965) at the jobsite. The Agency is required to pay the Inspector as the work progresses; but, no more than once a month and only after receiving an invoice with sufficient detail to justify the amount requested.

#### **H. PRE-CONSTRUCTION MEETING**

Once the agency awards a construction contract, the agency should invite the Inspectors, Special Inspector, Architect, Engineers and OSE to discuss the schedule of the project with the construction contractor, expectations regarding required inspections and testing, and how required inspections and testing fit into the project schedule. The Agency shall supply the construction contractor with the names of the inspectors and testing technicians who will be working on the project. At this meeting, the parties should also discuss the Statement of Special Inspections, Contractor schedule and the requirements/expectations of both the Contractor and the Special Inspector.

#### **I. CONSTRUCTION SCHEDULE**

After the pre-construction meeting with the Agency, A-E, Inspector and Special Inspector, the Construction Contractor should include the proposed inspection events in the construction schedule.

#### **J. ROLES AND RESPONSIBILITIES AS IT RELATES TO INSPECTIONS:**

##### **1. STATE AGENCY**

- a. Pre-Design Phase:
  - 1) The Agency shall be aware of the potential for special inspections and shall plan accordingly.
- b. Pre-Construction/Design Phase:
  - 1) The Agency must procure a firm to perform these duties. See Paragraph E.
  - 2) Participate in the pre-construction meeting.
  - 3) Prepare and Sign Statement of Special Inspection Responsibilities (SE-962).
- c. Construction Phase:
  - 1) Maintain inspection documentation.
  - 2) Verify Project Inspection and Testing Log (SE-965) is being utilized.
  - 3) Verify Project Inspection and Testing Deficiency Log (SE-966) is being utilized and deficiencies are being resolved.

**2. ARCHITECT****a. Design Phase:**

- 1) Ensure the Statement of Special Inspections is completed and incorporated into construction documents in a Quality Control section.

**b. Pre-Construction Phase:**

- 1) Facilitate Pre-construction meeting.
- 2) Sign the SE-962.

**c. Construction Phase:**

- 1) Provide construction administration as required.
- 2) Provide necessary modifications or corrective measure for inspection discrepancies.

**3. STRUCTURAL ENGINEER OF RECORD****a. Design Phase:**

- 1) Prepare the Statement of Special Inspections.

**b. Construction Phase:**

- 1) Provide construction administration as required.
- 2) Review inspection and testing reports.
- 3) Provide necessary modifications or corrective measures for inspection discrepancies.

**4. MEP ENGINEER(S) OF RECORD****a. Design Phase:**

- 1) Communicate with Structural Engineer of Record for the inclusion of inspection and testing for smoke control system(s), fire protection system(s), electrical and mechanical components, etc. in a Statement of Special Inspections.

**b. Construction Phase:**

- 1) Provide necessary modifications or corrective measures for inspection discrepancies.

**5. INSPECTOR****a. Pre-Construction Phase:**

- 1) Provide Agency and/or Architect an estimated fee for all inspection services, including re-inspection and re-testing fees to be charged to the contractor.
- 2) Participate in preconstruction meeting.

**b. Construction Phase:**

- 1) The Inspector shall provide all necessary inspections required by ICC and the contract documents.
- 2) Administer inspection process including managing and coordinating the inspections of various agents.
- 3) Adhere to reporting guidelines outlined in paragraph K.
- 4) Report any construction discrepancies to the Architect, Agency, related Engineer of Record and Contractor.
- 5) Re-inspect and/or re-test discrepancies after the Contractor has made such modification.
- 6) Inspector shall document re-inspection services separate from other duties. These services shall be charged back to the Contractor by the Agency. Copies of all re-inspection and re-testing invoices shall be submitted to the Agency and Architect.
- 7) Inspector shall attend normally scheduled construction meetings during the phase(s) inspections as needed.
- 8) Inspector cannot and shall not propose, recommend, advise or instruct the Contractor in any modifications, repairs or corrective measures.

**6. SPECIAL INSPECTOR****a. Pre-Construction Phase:**

- 1) The Special Inspector shall provide all necessary inspections and tests outlined in a Statement of Special Inspections and contract documents. The Special Inspector shall retain the services of other qualified agents as needed to fulfill these obligations.

- 2) Provide Agency an estimated fee for all inspection services and material testing. Fee should include breakdown for inspections and testing. Re-inspection and re-testing fees are paid by the Contractor.
- 3) Participate in preconstruction meeting.
- 4) Sign the SE-962.

**b. Construction Phase:**

- 1) Administer inspection process including managing and coordinating the inspections and testing of various agents.
- 2) Adhere to reporting guidelines outlined in paragraph K.
- 3) Report any construction discrepancies to the Architect, Agency, related Engineer of Record, OSE Project Manager and Contractor.
- 4) Re-inspect and/or re-test discrepancies after the contractor has made such modification.
- 5) Special Inspector shall document re-inspection services separate from other duties. These services shall be charged back to the Contractor by the Agency. Copies of all re-inspection and re-testing invoices shall be submitted to the Agency and Architect.
- 6) Special Inspector shall attend normally scheduled construction meetings during the phase(s) inspections as needed.
- 7) Special Inspector cannot and shall not propose, recommend, advise or instruct the contractor in any modifications, repairs or corrective measures.

**7. CONTRACTOR**

**a. Pre-Construction Phase:**

- 1) Participate in preconstruction meeting.
- 2) Review inspections and testing required by a Statement of Special Inspections, IBC Chapter 1 and construction documents.
- 3) Sign the SE-962.

**b. Construction Phase:**

- 1) Notify Agency, Inspector and Special Inspector for each portion of work requiring inspection or testing in a timely manner.
- 2) Correct discrepancies and notify the Inspector or Special Inspector for re-inspection or re-testing.
- 3) Provide access to and means for safe and proper inspection of work.

**8. OFFICE OF STATE ENGINEER**

**a. Design Phase:**

- 1) Aid in determining if special inspections are required per paragraph B.
- 2) Review completed Statement of Special Inspections in the contract documents.

**b. Pre-Construction:**

- 1) Participate in preconstruction meeting, as needed.
- 2) Provide assistance to Agency in selecting Inspector and Special Inspector.

**c. Construction Phase:**

- 3) Review all Inspection reports.
- 4) Review and monitor Deficiency Logs.

**K. INSPECTION AND REPORTING PROCESS GUIDELINES:**

1. The Agency shall ensure the Inspector and Special Inspector have the latest copy of the approved contract documents prior to contract negotiations and construction.
2. The Inspector is to review the contract documents in advance of inspecting the work.
3. The Special Inspector is to review a Statement of Special Inspections and the contract documents in advance of inspecting or testing any work.
4. The Inspector and Special Inspector shall ensure any agents that are hired by him are qualified for that portion of work and have a copy of their qualifications.
5. At a minimum, the Agency, Inspector, Special Inspector, Architect and Contractor shall attend pre-construction meeting.
6. Contractor shall perform his own check of work prior to notifying the Agency, Inspector and Special Inspector of needed inspection.

7. The Contractor shall provide the Inspector or Special Inspector a minimum of 2 days (unless otherwise agreed upon) for any work that is ready for inspection or testing. "Days" means calendar days minus state observed holidays. In computing any period of time, the day of the event from which the designated period of time begins is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall continue until the end of the next business day.
8. The Contractor shall provide access to and means for safe and proper inspection of work.
9. The Special Inspector shall perform inspections and testing in accordance to a Statement of Special Inspections, the approved contract documents and ICC Codes.
10. The Contractor is responsible to verify that all work requiring inspections and testing has been inspected or tested prior to concealment.
11. The Inspector and Special Inspector shall enter the appropriate data in the SE-965 and the SE-966 located in the Contractor's field office prior to leaving the site.
12. After each inspection, the Inspector or Special Inspector shall distribute a completed report to the Agency, the OSE Project Manager and A/E within two (2) business days. A copy of this report shall be left at the Contractor's field office. All reports must contain the State Project Name, State Project Number, Inspection date and time, Inspector and weather conditions.
13. When all work requiring inspections is completed and all deficiencies have been resolved, the Inspector and Special Inspector shall prepare a Final Report indicating the inspections have been completed and all deficiencies have been completed and submit it to the Agency, Architect, OSE Project Manager and the Contractor.
14. Contractor is to maintain at the job site a 3-ring binder with all inspection reports in an organized orderly manner. The binder shall be available for review by the Agency, A/E, OSE or others upon request.

**L. QUALIFICATION OF INSPECTORS AND SPECIAL INSPECTORS:**

Inspectors and Special Inspectors shall be certified by ICC for their particular area of expertise and listed as such on the statewide contract.

**SE-955**  
**INSPECTION/MATERIAL TESTING ORDER**

**AGENCY:** \_\_\_\_\_  
**PROJECT NAME:** \_\_\_\_\_  
**PROJECT NUMBER:** \_\_\_\_\_  
**MASTER AGREEMENT CONTRACT NUMBER:** \_\_\_\_\_  
**AGENCY INSPECTION ORDER NUMBER:** \_\_\_\_\_

**INSPECTION FIRM:** \_\_\_\_\_  
**ADDRESS:** \_\_\_\_\_

**FEE INFORMATION**

Inspection Firm's services and associated fees are set forth in the attached SE-955A, Inspection/Material Testing Order Negotiation Worksheet, dated \_\_\_\_\_, and the attachments to the Worksheet, all of which are incorporated herein by reference.

**INSPECTION/TESTING FEE TOTAL:** \$ \_\_\_\_\_  
**REIMBURSABLES:** \$ \_\_\_\_\_  
**CONTRACT TOTAL:** \$ \_\_\_\_\_

**SCHEDULE**

**START DATE:** \_\_\_\_\_  
**SCHEDULED COMPLETION DATE:** \_\_\_\_\_

In response to the Request for Inspection Services from the Agency, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Agency and Inspection Firm agree, as indicated by the signatures below, to the scope of services as described in this Inspection/Material Testing Order and the attached SE-955A shall be assigned to the Master Agreement for Inspection Services identified above.

**AGENCY:** \_\_\_\_\_ **INSPECTION FIRM:** \_\_\_\_\_  
**BY:** \_\_\_\_\_ **BY:** \_\_\_\_\_  
*(Signature of Representative)* *(Signature of Representative)*  
**PRINT NAME:** \_\_\_\_\_ **PRINT NAME:** \_\_\_\_\_  
**PRINT TITLE:** \_\_\_\_\_ **PRINT TITLE:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**INSPECTION ORDER CONSISTS OF:**

- 1. This Order, SE-955
- 2. SE-955A, Inspection/Material Testing Order Negotiation Worksheet
- 3. SE-962, Statement of Special Inspections Responsibilities (for Chapter 17 inspections only).

**SE-955A****INSPECTION/MATERIAL TESTING ORDER NEGOTIATION WORKSHEET**

<b>AGENCY:</b>	
<b>PROJECT NAME:</b>	
<b>PROJECT NUMBER:</b>	
<b>INSPECTION FIRM:</b>	

<b>Project Manager for Inspection Firm:</b>	
---	--

<b>ICC CHAPTER I INSPECTORS</b>	<b>NAME</b>	<b>CREDENTIALS (Insert or Attach)</b>
Building		
Electrical		
Mechanical		
Plumbing		

<b>ICC CHAPTER 17 INSPECTORS</b>	<b>NAME</b>	<b>CREDENTIALS (Insert or Attach)</b>
Prestressed Concrete		
Reinforced Concrete		
Structural Masonry		
Spray-applied Fireproofing		
Structural Steel & Bolting		
Structural Steel Welding		
Soils		
Smoke Control		
Cold Formed Steel Framing		
Wood Construction		
Architectural Components		
Fire Protection Systems		
Mechanical & Electrical Components		

<b>FIELD TESTING TECHNICIANS</b>	<b>NAME</b>	<b>CREDENTIALS (Insert or Attach)</b>
Soil		
Masonry Grout		
Concrete		
Footings		
Pile		
Deep Foundations		

**SE-955A**

**INSPECTION/MATERIAL TESTING ORDER NEGOTIATION WORKSHEET**

<b>IBC CHAPTER 1</b>	<b>INSPECTION TYPE</b>	<b>NUMBER OF INSPECTIONS</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>SUBTOTAL</b>
110.2	Site				\$ -
110.3.1	Footing and Foundation				\$ -
110.3.2	Concrete Slab and Under-Floor				\$ -
110.3.3	Lowest Floor Elevation				\$ -
110.3.4	Frame				\$ -
110.3.5	Lath and Gypsum Board				\$ -
110.3.6	Fire- and Smoke-Resistant Penetrations				\$ -
110.3.7	Energy Efficiency				\$ -
110.3.8	Other				\$ -
					\$ -
					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>

<b>IEC CHAPTER 1</b>	<b>INSPECTION TYPE</b>	<b>NUMBER OF INSPECTIONS</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>SUBTOTAL</b>
107.2(1)	Underground				\$ -
107.2(2)	Rough-In				\$ -
107.2(3)	Final				\$ -
107.2.1	Other				\$ -
					\$ -
					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>

<b>IFGC CHAPTER 1</b>	<b>INSPECTION TYPE</b>	<b>NUMBER OF INSPECTIONS</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>SUBTOTAL</b>
107.2(1)	Underground				\$ -
107.2(2)	Rough-In				\$ -
107.2(3)	Final				\$ -
107.2.1	Other				\$ -
					\$ -
					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>



**SE-955A**

**INSPECTION/MATERIAL TESTING ORDER NEGOTIATION WORKSHEET**

<b>IMC CHAPTER 1</b>	<b>INSPECTION TYPE</b>	<b>NUMBER OF INSPECTIONS</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>SUBTOTAL</b>
107.2(1)	Underground				\$ -
107.2(2)	Rough-In				\$ -
107.2(3)	Final				\$ -
107.3	Observation of Tests				\$ -
107.2.1	Other				\$ -
					\$ -
					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>

<b>IPC CHAPTER 1</b>	<b>INSPECTION TYPE</b>	<b>NO. OF INSPECTIONS</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>SUBTOTAL</b>
107.2(1)	Underground				\$ -
107.2(2)	Rough-In				\$ -
107.2(3)	Final				\$ -
107.3	Observation of Tests				\$ -
107.2.1	Other				\$ -
					\$ -
					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>

<b>IBC CHAPTER 17</b>	<b>INSPECTION TYPE</b>	<b>NO. OF INSPECTIONS</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>SUBTOTAL</b>
1704.2.5	Fabricators				\$ -
1705.2	Steel Construction				\$ -
1705.3	Concrete Construction				\$ -
1705.4	Masonry Construction				\$ -
1705.5	Wood Construction				\$ -
1705.6	Soils				\$ -
1705.7	Driven Deep Foundations				\$ -
1705.8	Cast-in-place Deep Foundations				\$ -
1705.9	Helical Pile Foundations				\$ -
1705.10	Wind Resistance				\$ -
1705.11	Seismic Resistance				\$ -
1705.13	Spray Fire-resistant Materials				\$ -
1705.15	Exterior Insulation and Finish Systems (EIFS)				\$ -
1705.17	Special Inspection for Smoke Control				\$ -
Other					\$ -
Other					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>

**SE-955A**

**INSPECTION/MATERIAL TESTING ORDER NEGOTIATION WORKSHEET**

MISC.	INSPECTION TYPE	NO. OF INSPECTIONS	HOURS	HOURLY RATE	SUBTOTAL
CWA § 402	NPDES Erosion Control				\$ -
Other					\$ -
					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>

LAB TESTS	NUMBER OF TESTS	PRICE PER TEST	SUBTOTAL
Standard Proctor - ASTM D698			\$ -
Modified Proctor - ASTM D1557			\$ -
Stone-Aggregate Density - ASTM D698/1557			\$ -
California Bearing Ratio - ASTM D1883			\$ -
Soil Moisture Content - ASTM D2216			\$ -
Atterberg Limits - ASTM D4318			\$ -
Wash 200 Fines - ASTM D1140/C117			\$ -
Grain Sieve Analysis w/o hydro. - ASTM C136			
Grain Sieve Analysis w/hydro. - ASTM D422			\$ -
Soil Specific Gravity - ASTM D854/D550			\$ -
Concrete Beam Strength - ASTM C78			\$ -
Concrete Cores Strength - ASTM C42			\$ -
Concrete Cylinders, Cure & Test - ASTM C31/39			\$ -
Grout Prism Strength - ASTM C 1019			\$ -
Mortar Cub Strength - ASTM C 109			\$ -
CMU Compressive Strength - ASTM C140			\$ -
Masonry Compressive Strength - ASTM C1314			\$ -
Masonry Testing - ASTM C67/78			\$ -
			\$ -
			\$ -
<b>SECTION SUBTOTAL</b>			<b>\$ -</b>

**SE-955A**

**INSPECTION/MATERIAL TESTING ORDER NEGOTIATION WORKSHEET**

TESTING TECHINCIAN FIELD TESTS	NUMBER OF TESTS	NUMBER OF HOURS /TESTS	TECH. HOURLY RATE	SUBTOTAL
Soil				\$ -
Masonry Grout				\$ -
Concrete				\$ -
Footings				\$ -
Pile				\$ -
				\$ -
				\$ -
Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>				<b>\$ -</b>

INSPECTION AND TESTING EQUIPMENT	UNIT OF MEASURE	NUMBER OF UNITS	PRICE PER UNIT	SUBTOTAL
Concrete Coreing Equip.	Days			\$ -
PDA Pile Test Equipment	Days			\$ -
Bolt Torque Wrench	Hours			\$ -
Ultrasonic Testing Equip.	Hours			\$ -
Nuclear Density Test Equipment (Soil)	Days			\$ -
				\$ -
				\$ -
				\$ -
<b>SECTION SUBTOTAL</b>				<b>\$ -</b>

<b>PROJECT SUPPORT</b>				
SUPPORT TYPE	TASKS	HOURS	HOURLY RATE	SUBTOTAL
Project Manager	Plan Review			\$ -
	Pre-Con. Meeting			\$ -
	Milestone Meetings			\$ -
	Inspector Management			\$ -
Clerical	Reports			\$ -
	General			\$ -
<b>SECTION SUBTOTAL</b>				<b>\$ -</b>

**SE-955A**

**INSPECTION/MATERIAL TESTING ORDER NEGOTIATION WORKSHEET**

	REIMBURSABLES	TOTAL UNITS	UNIT RATE	SUBTOTAL
	Trip Charge / Mileage (circle one)			\$ -
	Lodging Fees			\$ -
	Per Diem Fees			\$ -
				\$ -
				\$ -
	<b>SECTION SUBTOTAL</b>			<b>\$ -</b>
<b>GRAND TOTAL</b>				<b>\$ -</b>

**The Forgoing is Based on the Following Assumptions & Attachments**

**NOTE: Required tests and frequency shall be determined by the Design Professional.**

**APPROVAL**

Agency Representative: \_\_\_\_\_ Date: \_\_\_\_\_

Inspection Agency: \_\_\_\_\_ Date: \_\_\_\_\_

SE-960

AMENDMENT NO.: \_\_\_\_\_

**INSPECTION/MATERIAL TESTING ORDER AMENDMENT**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**MASTER AGREEMENT CONTRACT NUMBER:** \_\_\_\_\_

**AGENCY INSPECTION ORDER NUMBER:** \_\_\_\_\_

**INSPECTION FIRM:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**SERVICES & FEE INFORMATION**

Inspection Firm's additional services and associated fees are set forth in the attached SE-960A, Inspection/Material Testing Order Amendment Worksheet, dated \_\_\_\_\_, and the attachments to the Worksheet, all of which are incorporated herein by reference.

**FEE INFORMATION**

<b>1. INSPECTION/TESTING FEE:</b>	Contract Fee Prior to This Amendment		
	Change in Fee Per This Amendment		
	<b>Total Revised Inspection/Testing Fee:</b>		\$ 0.00
<b>2. REIMBURSABLE EXPENSES:</b>	Contract Amount Prior to This Amendment		
	Change in Amount Per This Amendment		
	<b>Total Revised Reimbursable Expenses:</b>		\$ 0.00
<b>3. REVISED CONTRACT TOTAL</b>			\$ 0.00

**ADJUSTED SCHEDULE**

**START DATE:** \_\_\_\_\_

**ORIGINAL COMPLETION DATE:** \_\_\_\_\_

**ADJUSTED COMPLETION DATE:** \_\_\_\_\_

The Agency and Inspection Firm hereby agree to amend the SE-955, Inspection/Material Testing Order dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as set forth herein. This Inspection/Material Testing Order and the attached SE-960A shall be assigned to the Master Agreement for Inspection/Material Testing Services identified above.

**AGENCY:** \_\_\_\_\_

**INSPECTION FIRM:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**BY:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**PRINT TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**INSPECTION ORDER CONSISTS OF:**

1. SE-955, Inspection/Material Testing Order
2. This Amendment, SE-960
3. SE-960A, Inspection/Material Testing Order Amendment Negotiation Worksheet
4. SE-962, Statement of Special Inspections Responsibilities (for Chapter 17 inspections only).

**SE-960A**

**INSPECTION/MATERIAL TESTING ORDER AMENDMENT WORKSHEET**

<b>AGENCY:</b>	
<b>PROJECT NAME:</b>	
<b>PROJECT NUMBER:</b>	
<b>INSPECTION FIRM:</b>	

<b>Project Manager for Inspection Firm:</b>	
---	--

<b>ICC CHAPTER I INSPECTORS</b>	<b>NAME</b>	<b>CREDENTIALS (Insert or Attach)</b>
Building		
Electrical		
Mechanical		
Plumbing		

<b>ICC CHAPTER 17 INSPECTORS</b>	<b>NAME</b>	<b>CREDENTIALS (Insert or Attach)</b>
Prestressed Concrete		
Reinforced Concrete		
Structural Masonry		
Spray-applied Fireproofing		
Structural Steel & Bolting		
Structural Steel Welding		
Soils		
Smoke Control		
Cold Formed Steel Framing		
Wood Construction		
Architectural Components		
Fire Protection Systems		
Mechanical & Electrical Components		

<b>FIELD TESTING TECHNICIANS</b>	<b>NAME</b>	<b>CREDENTIALS (Insert or Attach)</b>
Soil		
Masonry Grout		
Concrete		
Footings		
Pile		
Deep Foundations		

**SE-960A**

**INSPECTION/MATERIAL TESTING ORDER AMENDMENT WORKSHEET**

<b>IBC CHAPTER 1</b>	<b>INSPECTION TYPE</b>	<b>NUMBER OF INSPECTIONS</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>SUBTOTAL</b>
110.2	Site				\$ -
110.3.1	Footing and Foundation				\$ -
110.3.2	Concrete Slab and Under-Floor				\$ -
110.3.3	Lowest Floor Elevation				\$ -
110.3.4	Frame				\$ -
110.3.5	Lath and Gypsum Board				\$ -
110.3.6	Fire- and Smoke-Resistant Penetrations				\$ -
110.3.7	Energy Efficiency				\$ -
110.3.8	Other				\$ -
					\$ -
					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>

<b>IEC CHAPTER 1</b>	<b>INSPECTION TYPE</b>	<b>NUMBER OF INSPECTIONS</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>SUBTOTAL</b>
107.2(1)	Underground				\$ -
107.2(2)	Rough-In				\$ -
107.2(3)	Final				\$ -
107.2.1	Other				\$ -
					\$ -
					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>

<b>IFGC CHAPTER 1</b>	<b>INSPECTION TYPE</b>	<b>NUMBER OF INSPECTIONS</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>SUBTOTAL</b>
107.2(1)	Underground				\$ -
107.2(2)	Rough-In				\$ -
107.2(3)	Final				\$ -
107.2.1	Other				\$ -
					\$ -
					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>

**SE-960A**

**INSPECTION/MATERIAL TESTING ORDER AMENDMENT WORKSHEET**

<b>IMC CHAPTER 1</b>	<b>INSPECTION TYPE</b>	<b>NUMBER OF INSPECTIONS</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>SUBTOTAL</b>
107.2(1)	Underground				\$ -
107.2(2)	Rough-In				\$ -
107.2(3)	Final				\$ -
107.3	Observation of Tests				\$ -
107.2.1	Other				\$ -
					\$ -
					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>

<b>IPC CHAPTER 1</b>	<b>INSPECTION TYPE</b>	<b>NO. OF INSPECTIONS</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>SUBTOTAL</b>
107.2(1)	Underground				\$ -
107.2(2)	Rough-In				\$ -
107.2(3)	Final				\$ -
107.3	Observation of Tests				\$ -
107.2.1	Other				\$ -
					\$ -
					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>

<b>IBC CHAPTER 17</b>	<b>INSPECTION TYPE</b>	<b>NO. OF INSPECTIONS</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>SUBTOTAL</b>
1704.2.5	Fabricators				\$ -
1705.2	Steel Construction				\$ -
1705.3	Concrete Construction				\$ -
1705.4	Masonry Construction				\$ -
1705.5	Wood Construction				\$ -
1705.6	Soils				\$ -
1705.7	Driven Deep Foundations				\$ -
1705.8	Cast-in-place Deep Foundations				\$ -
1705.9	Helical Pile Foundations				\$ -
1705.10	Wind Resistance				\$ -
1705.11	Seismic Resistance				\$ -
1705.13	Spray Fire-resistant Materials				\$ -
1705.15	Exterior Insulation and Finish Systems (EIFS)				\$ -
1705.17	Special Inspection for Smoke Control				\$ -
Other					\$ -
Other					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>



**SE-960A**

**INSPECTION/MATERIAL TESTING ORDER AMENDMENT WORKSHEET**

MISC.	INSPECTION TYPE	NO. OF INSPECTIONS	HOURS	HOURLY RATE	SUBTOTAL
CWA § 402	NPDES Erosion Control				\$ -
Other					\$ -
					\$ -
	Plan Review & Major Task Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>					<b>\$ -</b>

LAB TESTS	NUMBER OF TESTS	PRICE PER TEST	SUBTOTAL
Standard Proctor - ASTM D698			\$ -
Modified Proctor - ASTM D1557			\$ -
Stone-Aggregate Density - ASTM D698/1557			\$ -
California Bearing Ratio - ASTM D1883			\$ -
Soil Moisture Content - ASTM D2216			\$ -
Atterberg Limits - ASTM D4318			\$ -
Wash 200 Fines - ASTM D1140/C117			\$ -
Grain Sieve Analysis w/o hydro. - ASTM C136			
Grain Sieve Analysis w/hydro. - ASTM D422			\$ -
Soil Specific Gravity - ASTM D854/D550			\$ -
Concrete Beam Strength - ASTM C78			\$ -
Concrete Cores Strength - ASTM C42			\$ -
Concrete Cylinders, Cure & Test - ASTM C31/39			\$ -
Grout Prism Strength - ASTM C 1019			\$ -
Mortar Cub Strength - ASTM C 109			\$ -
CMU Compressive Strength - ASTM C140			\$ -
Masonry Compressive Strength - ASTM C1314			\$ -
Masonry Testing - ASTM C67/78			\$ -
			\$ -
			\$ -
<b>SECTION SUBTOTAL</b>			<b>\$ -</b>

**SE-960A**

**INSPECTION/MATERIAL TESTING ORDER AMENDMENT WORKSHEET**

TESTING TECHINCIAN FIELD TESTS	NUMBER OF TESTS	NUMBER OF HOURS /TESTS	TECH. HOURLY RATE	SUBTOTAL
Soil				\$ -
Masonry Grout				\$ -
Concrete				\$ -
Footings				\$ -
Pile				\$ -
				\$ -
				\$ -
Pre-Planning Mtgs.				\$ -
<b>SECTION SUBTOTAL</b>				<b>\$ -</b>

INSPECTION AND TESTING EQUIPMENT	UNIT OF MEASURE	NUMBER OF UNITS	PRICE PER UNIT	SUBTOTAL
Concrete Coreing Equipment	Days			\$ -
PDA Pile Test Equipment	Days			\$ -
Bolt Torque Wrench	Hours			\$ -
Equipment	Hours			\$ -
Nuclear Density Test Equipment (Soil)	Days			\$ -
				\$ -
				\$ -
				\$ -
<b>SECTION SUBTOTAL</b>				<b>\$ -</b>

<b>PROJECT SUPPORT</b>				
SUPPORT TYPE	TASKS	HOURS	HOURLY RATE	SUBTOTAL
Project Manager	Plan Review			\$ -
	Pre-Con. Meeting			\$ -
	Milestone Meetings			\$ -
	Inspector Management			\$ -
Clerical	Reports			\$ -
	General			\$ -
<b>SECTION SUBTOTAL</b>				<b>\$ -</b>

**SE-960A**

**INSPECTION/MATERIAL TESTING ORDER AMENDMENT WORKSHEET**

	REIMBURSABLES	TOTAL UNITS	UNIT RATE	SUBTOTAL
	Trip Charge / Mileage (circle one)			\$ -
	Lodging Fees			\$ -
	Per Diem Fees			\$ -
				\$ -
				\$ -
	<b>SECTION SUBTOTAL</b>			<b>\$ -</b>
<b>GRAND TOTAL</b>				<b>\$ -</b>

**The Forgoing is Based on the Following Assumptions & Attachments**

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**APPROVAL**

Agency Representative: \_\_\_\_\_ Date: \_\_\_\_\_

Inspection Agency: \_\_\_\_\_ Date: \_\_\_\_\_

**SE-962****STATEMENT OF SPECIAL INSPECTIONS RESPONSIBILITIES***(For Chapter 17 Inspections Only)***AGENCY:** \_\_\_\_\_**PROJECT NAME:** \_\_\_\_\_**PROJECT NUMBER:** \_\_\_\_\_**BUILDING/CONSTRUCTION PERMIT APPROVAL DATE:** \_\_\_\_\_**INSPECTION FIRM:** \_\_\_\_\_**ADDRESS: Street/PO Box:** \_\_\_\_\_**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_ - \_\_\_\_\_**CONTACT PERSON:** \_\_\_\_\_**EMAIL:** \_\_\_\_\_ **TELEPHONE:** \_\_\_\_\_**ARCHITECT-ENGINEER (A/E):** \_\_\_\_\_**CONTRACTOR:** \_\_\_\_\_**A. AGENCY**

In accordance to Section 1704 of the 2015 International Building Code (IBC), an independent testing/inspection firm is to perform required special inspections. The above named Inspection Firm has been retained to perform the duties of special inspection.

**B. A/E RESPONSIBILITY**

1. The registered design professional in responsible charge has included special inspection requirements and specifications on the plans and prepared the Statement of Special Inspections in accordance with IBC section 1704.3.
2. The registered design professional in responsible charge shall review the special inspection reports and provide corrective action for work that may not conform to the approved plans.

**C. CONTRACTOR'S RESPONSIBILITIES****1. Assuring Subcontractor Compliance**

- a. The Contractor is responsible to advise his subcontractors of the inspection and testing requirements affecting their work and assuring conformance with all notice requirements necessary to assure timely performance of required inspections and tests.
- b. The Contractor shall maintain on the job site, a copy of the Statement of Special Inspections signed by each subcontractor and/or supplier whose work requires inspection and/or testing pursuant to said Statement. Such signature shall constitute acknowledgement that they have read and agree to the inspection and testing requirements of the Statement of Special Inspections.

**2. Notify the Inspection Firm**

The Contractor is responsible for notifying the inspection firm at least 24 hours before the required inspections.

**3. Written Statement of Responsibility**

Contractor shall complete this form to satisfy IBC 1704.4, Contractor responsibility for construction of designated main-wind or seismic force resisting system.

**4. Provide Access to Office of State Engineer Approved Plans**

The approved plans shall be readily accessible at the job site.

**5. Provide Access to Work**

The Contractor shall provide reasonable access to all work requiring special inspection.

**6. Retaining Special Inspection Reports at the Job Site**

The Contractor is also responsible for retaining at the job site all special inspection records submitted by the special inspector, and providing these records for review by the Agency, Architect-Engineer, and/or OSE upon request.

**7. Notify Agency of Special Inspections** prior to scheduled inspection time.**D. SPECIAL INSPECTOR RESPONSIBILITIES****1. Responding to Request for Inspection(s)**

- a. The inspection firm shall respond to a request to schedule an inspection/test and schedule the inspection(s)/test(s) no later than two (2) business days after receiving the request.
- b. The inspection firm shall immediately notify the building official and Agency by email if the construction Contractor is failing to request required inspections

**2. Observe the work**

- a. The inspector(s) shall observe the work for compliance with the OSE approved plans, specifications, and applicable provisions of the IBC. The A/E's reviewed shop drawings, and/or placement drawings, may be used only as an aid to inspections.
- b. The inspection firm shall maintain the Project Inspection/Material Testing Log (SE-965), at the jobsite
- c. For each inspection trip, the inspection firm's inspectors and testing technicians shall document on the SE-965 the following information before leaving the site:
  - 1) the date of the inspection(s),
  - 2) the time they arrived,
  - 3) their name and ICC certification number,
  - 4) the type and location of inspection(s) and/or test(s) to be performed,
  - 5) that they gave a written report to the construction contractor prior to leaving the site, and
  - 6) the time they left the site.

**3. Report non-conforming items**

- a. The inspector shall bring non-conforming items to the immediate attention of the General Contractor while on site.
- b. The inspector shall notify the Agency and A/E within 24 hours of any re-inspection requirements, and shall document the date of the deficiency, the name of the inspector that discovered the deficiency and any action taken to correct each deficiency on the Project Inspection/Material Testing Deficiency Log (SE-966), at the jobsite.
- c. The inspection firm shall forward a copy of the SE-965 and SE-966 to OSE monthly.

**4. Furnish reports**

- a. For each inspection trip, the inspector shall make a written report and provide a copy of the report to the construction contractor's project superintendent before to leaving the site. The copy provided to the construction contractor shall not be via a link to a website unless the Contractor agrees to such delivery in writing.
- b. The inspection firm shall provide the OSE, Agency and A/E a copy of the report within two business days after the inspection. The means of delivery of the report to the Agency and A/E is subject to the approval of the Agency. OSE will accept delivery via an attachment to email. OSE will not accept delivery via a link to a website.
- c. Each written report shall include the results of the inspection, a summary of any communication with the construction Contractor, and supporting photographs

**5. Stop Work**

The inspector does not have the authority to issue a Stop Work Order unless a hazardous situation presents an immediate threat to the health, safety, or welfare of people on or about the project site.

**E. OFFICE OF STATE ENGINEER (OSE)**

**1. Review special inspections**

OSE will review project inspection reports and all Project Inspection/Material Testing Logs and Deficiency Logs.

**2. Issue Certificate of Occupancy**

OSE will only issue a Certificate of Occupancy after all special inspection reports have been submitted and all deficiencies have been resolved.

**ACKNOWLEDGMENTS**

The undersigned read and understand our responsibilities regarding special inspections.

**AGENCY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**CONTRACTOR:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**INSPECTION FIRM:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**A/E:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
*(Signature of Representative)*

**PRINT NAME:** \_\_\_\_\_

**SE-965**  
**PROJECT INSPECTION/MATERIAL TESTING LOG**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**INSPECTION FIRM:** \_\_\_\_\_

Item #	Date	Time In	Inspector's Name	ICC Certification #	Type of Inspection / Test	Location of Inspection / Test	Report Given to Contractor	Time Out
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								

**SE-965**

**PROJECT INSPECTION/MATERIAL TESTING LOG**

Item #	Date	Time In	Inspector's Name	ICC Certification #	Type of Inspection / Test	Location of Inspection / Test	Report Given to Contractor	Time Out
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
21.								
22.								
23.								
24.								



**SE-965**

**PROJECT INSPECTION/MATERIAL TESTING LOG**

<b>Item #</b>	<b>Date</b>	<b>Time In</b>	<b>Inspector's Name</b>	<b>ICC Certification #</b>	<b>Type of Inspection / Test</b>	<b>Location of Inspection / Test</b>	<b>Report Given to Contractor</b>	<b>Time Out</b>
25.								
26.								
27.								
28.								
29.								
30.								
31.								
32.								
33.								
34.								
35.								
36.								
37.								

SE-965

## PROJECT INSPECTION/MATERIAL TESTING LOG

Item #	Date	Time In	Inspector's Name	ICC Certification #	Type of Inspection / Test	Location of Inspection / Test	Report Given to Contractor	Time Out
38.								
39.								
40.								
41.								
42.								
43.								
44.								
45.								
46.								
47.								
48.								
49.								
50.								

SE-965

## PROJECT INSPECTION/MATERIAL TESTING LOG

Item #	Date	Time In	Inspector's Name	ICC Certification #	Type of Inspection / Test	Location of Inspection / Test	Report Given to Contractor	Time Out
51.								
52.								
53.								
54.								
55.								
56.								
57.								
58.								
59.								
60.								
61.								
62.								
63.								

**SE-965**

**PROJECT INSPECTION/MATERIAL TESTING LOG**

Item #	Date	Time In	Inspector's Name	ICC Certification #	Type of Inspection / Test	Location of Inspection / Test	Report Given to Contractor	Time Out
64.								
65.								
66.								
67.								
68.								
69.								
70.								
71.								
72.								
73.								
74.								
75.								
76.								

**SE-965**

**PROJECT INSPECTION/MATERIAL TESTING LOG**

Item #	Date	Time In	Inspector's Name	ICC Certification #	Type of Inspection / Test	Location of Inspection / Test	Report Given to Contractor	Time Out
77.								
78.								
79.								
80.								
81.								
82.								
83.								
84.								
85.								
86.								
87.								
88.								
89.								

SE-965

## PROJECT INSPECTION/MATERIAL TESTING LOG

Item #	Date	Time In	Inspector's Name	ICC Certification #	Type of Inspection / Test	Location of Inspection / Test	Report Given to Contractor	Time Out
90.								
91.								
92.								
93.								
94.								
95.								
96.								
97.								
98.								
99.								
100.								

**SE-966**

**PROJECT INSPECTION/MATERIAL TESTING DEFICIENCY LOG**

**AGENCY:** \_\_\_\_\_

**PROJECT NAME:** \_\_\_\_\_

**PROJECT NUMBER:** \_\_\_\_\_

**INSPECTION FIRM:** \_\_\_\_\_

**INSPECTOR CERTIFICATION:** *(to be signed after inspection for Certificate of Occupancy and resolution of all deficiencies)*

I hereby certify that, to the best of my knowledge, all work on this project was completed in accordance with the contract documents.

**SIGNATURE OF INSPECTOR:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

Item #	Report #	Date Found	Inspector's Name	Deficiency	Location	Action Taken	Date Resolved
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							
11.							
12.							
13.							

**SE-966**

**PROJECT INSPECTION/MATERIAL TESTING DEFICIENCY LOG**

<b>Item #</b>	<b>Report #</b>	<b>Date Found</b>	<b>Inspector's Name</b>	<b>Deficiency</b>	<b>Location</b>	<b>Action Taken</b>	<b>Date Resolved</b>
14.							
15.							
16.							
17.							
18.							
19.							
20.							
21.							
22.							
23.							
24.							
25.							
26.							
27.							
28.							
29.							
30.							
31.							
32.							
33.							



**SE-966**

**PROJECT INSPECTION/MATERIAL TESTING DEFICIENCY LOG**

<b>Item #</b>	<b>Report #</b>	<b>Date Found</b>	<b>Inspector's Name</b>	<b>Deficiency</b>	<b>Location</b>	<b>Action Taken</b>	<b>Date Resolved</b>
34.							
35.							
36.							
37.							
38.							
39.							
40.							
41.							
42.							
43.							
44.							
45.							
46.							
47.							
48.							
49.							
50.							
51.							
52.							
53.							

**SE-966**

**PROJECT INSPECTION/MATERIAL TESTING DEFICIENCY LOG**

<b>Item #</b>	<b>Report #</b>	<b>Date Found</b>	<b>Inspector's Name</b>	<b>Deficiency</b>	<b>Location</b>	<b>Action Taken</b>	<b>Date Resolved</b>
54.							
55.							
56.							
57.							
58.							
59.							
60.							
61.							
62.							
63.							
64.							
65.							
66.							
67.							
68.							
69.							
70.							
71.							
72.							
73.							

**SE-966**

**PROJECT INSPECTION/MATERIAL TESTING DEFICIENCY LOG**

<b>Item #</b>	<b>Report #</b>	<b>Date Found</b>	<b>Inspector's Name</b>	<b>Deficiency</b>	<b>Location</b>	<b>Action Taken</b>	<b>Date Resolved</b>
74.							
75.							
76.							
77.							
78.							
79.							
80.							
81.							
82.							
83.							
84.							
85.							

## **OSE CERTIFICATIONS**

The following code tables and certifications are based on the most current codes adopted by OSE shown in Chapter 5 of this manual. These tables and certifications are to be included on the Construction Drawings AS-IS. Do not re-create these in another format or medium. Please contact OSE if you need assistance.

<b>ZONING CERTIFICATION</b>	
<p>"I hereby certify that, to the best of my knowledge, these plans comply with applicable zoning ordinances, and that plans have been submitted to appropriate authority for their review and/or approval."</p>	
Signed: _____ <div style="text-align: center; width: 50%;">Architect/Engineer</div>	_____ <div style="text-align: center; width: 50%;">Date</div>

If the project does not require a National Pollution Discharge Elimination System (NPDES) permit from SCDHEC, include the following certification on the Site Plan(s):

<b>EROSION AND SEDIMENT REDUCTION/STORMWATER MANAGEMENT</b>	
<p>Designer's Certification:</p> <p>"I hereby certify that the measures in this plan are designed to control erosion, retain sediment on the site, and manage stormwater in a manner that neither any on-site nor off-site damage or problem is caused or increased, that all structural measures are designed to the minimum standards for health and safety, and that all the provisions of the plan are in compliance with the Regulations contained in Chapter 72, Article 2, SC Code of Regulations (Erosion and Sediment Reduction and Stormwater Management Regulations)."</p>	
Signed: _____ <div style="text-align: center; width: 50%;">Engineer or Registered Landscape Architect (Circle one)</div>	_____ <div style="text-align: center; width: 50%;">Date</div>

<b>TABLE 1 FLOOD HAZARD INFORMATION &amp; FLOOD LOADS</b>			
<b><u>FLOOD HAZARD AREA</u></b>			
Flood Map Information: Flood Zone: _____	Community Number: _____		
Is the Project Site in a 100-Year Flood Plain? Yes <input type="checkbox"/> No <input type="checkbox"/>	Panel Number: _____		
Base Flood Elevation _____ MSL	NGVD or FIRM		
Design Flood Elevation _____ MSL	IBC 1612.3 and ASCE 24		
<b><u>NON HIGH-VELOCITY WAVE ACTION</u></b>			
Elevation of Lowest Proposed Floor _____ MSL	Meet ASCE 24 Section 2.6.2.1/ 2.6.2.2		
Dry floodproofing Yes <input type="checkbox"/> No <input type="checkbox"/>	per ASCE 24		
<b><u>HIGH-VELOCITY WAVE ACTION</u></b>			
Elevation of bottom of Lowest Horizontal Structural Member of lowest floor _____ MSL			
Flotation resistant Yes <input type="checkbox"/> No <input type="checkbox"/>	per ASCE 24		
Breakaway wall Yes <input type="checkbox"/> No <input type="checkbox"/>	per ASCE 24		

IBC 1612 and SE-510, as applicable

<b>TABLE 2 SOILS &amp; SITE</b>		
<b>SOILS INVESTIGATION</b> (If required)	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC 1803.2
<b><u>SOILS CLASSIFICATION</u></b>		
Site Class	_____	per IBC 1613.3.2
Classes Soil of Materials (UCS System)	_____	per IBC 1803.5.1
Allowable Footing Bearing Pressure	_____ psf	
<b>MINIMUM DESIGN SOIL BEARING LOAD</b>	_____ psf	per IBC table 1806.2
<b><u>COMPACTION</u></b>		
Subgrade: _____ Percent	<input type="checkbox"/> ASTM D698 <input type="checkbox"/> ASTM D1557 <input type="checkbox"/> AASHTO (only for paving & roads)	
Base: _____ Percent	<input type="checkbox"/> ASTM D698 <input type="checkbox"/> ASTM D1557 <input type="checkbox"/> AASHTO (only for paving & roads)	
Other: _____ Percent	<input type="checkbox"/> ASTM D698 <input type="checkbox"/> ASTM D1557 <input type="checkbox"/> AASHTO (only for paving & roads)	
<b>MINIMUM DESIGN SOIL LATERAL LOAD</b>	_____ psf	per IBC 1610.1
<b><u>FOOTINGS</u></b>		
Undisturbed footings	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Compacted Fill Material	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC 1804.6
<b><u>ELEVATIONS</u></b>		
Elevation of Water Table:	_____	MSL
Elevation of lowest footing:	_____	MSL
Elevation of lowest floor or basement:	_____	MSL

**NOTE:** Where a fire wall is necessary to separate buildings, each building is to be provided individual code criteria tables 3 through 14. See IBC 503.1.2.

<b>TABLE 3 BASIC BUILDING CODE INFORMATION</b>			
<b>CONSTRUCTION CLASSIFICATION</b>	Type: _____ (IBC 602)		
<b>OCCUPANCY CLASSIFICATION</b> (indicate all) (Note IBC 504.2)	_____ (IBC 302)		
<b>MOST RESTRICTIVE OCCUPANCY CLASSIFICATION</b>	_____ (IBC Tables 504.3, 504.4 & 506.2)		
Does building require Incidental Use Area Separation?	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IBC 509.1)	
Does building have Accessory Occupancy (ies)? If so, what percent of story is Accessory Occupancy?	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IBC 508.2)	_____ SF _____ %
Mixed Occupancy	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IBC 508)	
Non separated	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IBC 508.3)	
Separated	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IBC 506.2.2) (IBC 506.2.4) (IBC 508.4)	
2-way Communication Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IBC 1009.8) (IBC 1009.6.5)	
Fire Apparatus Access and Water Line	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IFC 503 & 507)	
<b>OTHER FIRE PROTECTION SYSTEMS, DEVICES or FEATURES</b>			
If the building has any special or notable fire protection or safety feature or hazard the designers should list them here, describe the performance characteristics and refer to locations in construction documents. (e.g. fire extinguishers, smoke-evacuation/control/compartments. Note IBC 414.1.3.)			

<b>TABLE 4 BUILDING AREA</b>	
<b>AREA LIMIT BY TABLE 506.2 OF IBC</b>	_____ SF (area limitation per story)
<b>AREA INCREASES BY SECTION 506.2 AND 506.3 OF IBC</b> <b>EXPLANATION OF INCREASES:</b> _____	_____ SF (maximum modified area per story)
<b>AREA AS ALLOWED IN IBC PER STORY</b> Story/Level: _____ Story/Level: _____ Story/Level: _____ Story/Level: _____	_____ SF (area per story) _____ SF (area per story) _____ SF (area per story) _____ SF (area per story)
<b>TOTAL ALLOWED AREA OF BUILDING</b> (summary of all stories)	_____ SF
<b>AREA AS DESIGNED PER STORY</b> Story/Level: _____ Story/Level: _____ Story/Level: _____ Story/Level: _____	_____ SF (area per story) _____ SF (area per story) _____ SF (area per story) _____ SF (area per story)
<b>TOTAL DESIGNED AREA OF BUILDING</b> (summary of all stories)	_____ SF



<b>TABLE 5 BUILDING HEIGHT</b>				
	<b>AS DESIGNED</b>		<b>AS ALLOWED BY IBC</b>	
	In Feet	In Stories	In Feet	In Stories
PER TABLE 504.3	_____	N/A	_____	N/A
PER TABLE 504.4	N/A	_____	N/A	_____
<b>TOTAL HEIGHT</b> (including any Allowable Increase)	_____	_____	_____	_____

<b>TABLE 6 BUILDING DESIGN OCCUPANT LOAD</b>					
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>STORY/ LEVEL</b>	<b>FUNCTION OF SPACE <sup>(1)</sup></b>	<b>FLOOR AREA <sup>(2)</sup> (NSF or GSF)</b>	<b>MAX AREA ALLOWED PER OCCUPANT <sup>(3)</sup> (NSF or GSF)</b>	<b>OCCUPANTS ON FLOOR FOR THIS FUNCTION <sup>(4)</sup></b>	<b>DESIGN OCCUPANT LOAD <sup>(5)</sup></b>
—	—	—	—	—	
	—	—	—	—	
	—	—	—	—	
	—	—	—	—	
	<b>Subtotal Design Occupant Load for This Story</b>				
—	—	—	—	—	
	—	—	—	—	
	—	—	—	—	
	—	—	—	—	
	<b>Subtotal Design Occupant Load for This Story</b>				
—	—	—	—	—	
	—	—	—	—	
	—	—	—	—	
	—	—	—	—	
	<b>Subtotal Design Occupant Load for This Story</b>				
—	—	—	—	—	
	—	—	—	—	
	—	—	—	—	
	—	—	—	—	
	<b>Subtotal Design Occupant Load for This Story</b>				
<b>TOTAL BUILDING DESIGN OCCUPANT LOAD</b>					— <sup>(6)</sup>
<b>FOOTNOTES:</b>					
1. Provide the complete name of the Function of Space using the left column of Table 1004.1.2 of the IBC <sup>(1)</sup>					
2. Design Area per each occupant of this Function on this Story in either Gross (GSF) or Net (NSF) Square Footage <sup>(2)</sup>					
3. Allowed Floor Areas in SF per Occupant per right column in Table 1004.1.2 of the IBC <sup>(3)</sup>					
4. Divide Column A (2) by Column B (3) for each function and enter result, rounded up to the nearest whole person <sup>(4)</sup>					
5. Subtotal all Column C values for this floor to yield the Design Occupant Load <sup>(5)</sup>					
6. Total Building Design Occupant Load –sum of all Column D value <sup>(6)</sup>					

<b>TABLE 7 GENERAL FIRE PROTECTION REQUIREMENTS</b>		
<b>SEPARATIONS</b>		
Fireblocking Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 718
Draftstopping Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 718
Smoke Control System Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 909
Smoke Barriers Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 407 and 408
Smoke Partitions Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 407
Fire Partition Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 708
Fire Barrier Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 707
<b>ALARM &amp; DETECTION</b>		
Fire Alarm System Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC Section 907
Emergency/Voice Alarm Communications System Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC Section 907.5.2.2
Emergency Alarm System Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC Section 908
<b>SUPPRESSION</b>		
Standpipes Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC Section 905
Sprinklers Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC Section 903
Sprinklers Provided	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____
Portable extinguishers required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC 906
Other suppression systems required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC 904
Smoke & heat vents required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC 910
<b>OTHER: (Indicate other provided fire and life safety features not listed above, if any)</b>		
_____		
_____		
_____		

<b>TABLE 8 FIRE RESISTANCE RATING OF BUILDING ELEMENTS</b>				
<b>BUILDING ELEMENT</b>	<b>RATING AS REQUIRED (in hours)</b>	<b>RATING AS DESIGNED (in hours)</b>	<b>TESTING AGENCY &amp; DESIGN NO. (UL, FM, etc)</b>	<b>DESIGNERS WALL/PARTITION KEY CODE</b>
Primary Structural Frame (per IBC Table 601)	—	—	—	
Bearing Walls Exterior Interior (per IBC Table 601)	— —	— —	— —	— —
Nonbearing Walls & Partitions Exterior Interior (per IBC Table 601 & 602) Note footnote “d” from Table 601.	— —	— —	— —	— —
Floor Construction including supporting beams & joists (per IBC Table 601)	—	—	—	
Roof Construction including supporting beams & joists (per IBC Table 601)	—	—	—	
Fire Walls (per IBC Section 706)	—	—	—	—
Fire Barriers (per IBC Section 707)	—	—	—	—
Shaft Enclosures (per IBC Section 713)	—	—	—	—
Fire Partitions (per IBC Section 708)	—	—	—	—
Opening & Protective Listing by Category (fire shutters, doors, etc. per IBC Section 716)	—	—	—	—
Others (as required by Designer)	—	—	—	—

**TABLE 9 STRUCTURAL DESIGN INFORMATION****RISK CATEGORY:** \_\_\_\_\_

IBC Table 1604.5

**LIVE LOADS**Floor Live Load(s) - List the  $F_{ll}$  for each occupancy/use.Occupancy/Use: \_\_\_\_\_  $F_{ll} =$  \_\_\_\_\_ PSFOccupancy/Use: \_\_\_\_\_  $F_{ll} =$  \_\_\_\_\_ PSFOccupancy/Use: \_\_\_\_\_  $F_{ll} =$  \_\_\_\_\_ PSFOccupancy/Use: \_\_\_\_\_  $F_{ll} =$  \_\_\_\_\_ PSFRoof Live Load  $R_{ll} =$  \_\_\_\_\_ PSFGround Snow Load  $p_g =$  \_\_\_\_\_ PSF

IBC Figure 1608.2 ( or ASCE 7)

**WIND LOADS**

Analysis Procedure: \_\_\_\_\_

ASCE 7 or IBC 1609

Ultimate Design Wind Speed:  $V_{ULT} =$  \_\_\_\_\_ MPH

IBC Fig's. 1609.3(1)-(3)

Exposure Category: \_\_\_\_\_

IBC 1609.4.3

Internal Pressure Coefficient:  $GC_{pi} =$  \_\_\_\_\_

ASCE 7

External Pressure Coefficient:  $GC_p =$  \_\_\_\_\_

ASCE 7

Protection of Openings Required Yes  No 

IBC 1609.1.2

If "Yes", check one: Impact Resistant Glazing Impact Resistant Covering **SEISMIC LOADS**Seismic Importance Factor:  $I_e =$  \_\_\_\_\_

ASCE 7 Table 1.5-2

Site Class: \_\_\_\_\_

IBC 1613.3.2

Mapped Spectral Response Accelerations:

 $S_s =$  \_\_\_\_\_  $S_1 =$  \_\_\_\_\_

Design Spectral Response Acceleration Parameters:

 $S_{DS} =$  \_\_\_\_\_  $S_{D1} =$  \_\_\_\_\_

Seismic Design Category: \_\_\_\_\_

IBC Tables 1613.3.5(1) &amp; 1613.3.5(2)

Basic Seismic Force Resisting System: \_\_\_\_\_

ASCE 7 Chapter 12

Design Base Shear: \_\_\_\_\_ KIPS

Seismic Response Coefficient(s):  $C_s =$  \_\_\_\_\_

ASCE 7

Response Modification Factor(s):  $R =$  \_\_\_\_\_

ASCE 7

Analysis Procedure: \_\_\_\_\_

**ARCHITECTURAL-MECHANICAL-ETC. LOADS**

Provide as applicable: architectural items, mechanical, plumbing, etc. per ASCE 7

**SPECIAL LOADS**

Provide as applicable: abnormal items, moving loads, impact, hoisting, etc. per ASCE 7

\*per IBC Chapter 16 and ASCE 7 -- Information may be shown on initial Structural Sheet of the drawings or on Sheet with other code information. List floor design loads on structural plans.

<b>TABLE 10 PLUMBING INFORMATION</b>				
<b><u>WATER SYSTEM:</u></b> Service Line Size: _____ Inches Peak Flow: _____ GPM Total Demand: _____ No. Fixture Units				
<b><u>SANITARY SEWER SYSTEM:</u></b> Loading: _____ GPD Service Line Size: _____ Inches Slope: _____ min inches/ft				
<b><u>MINIMUM PLUMBING FIXTURES REQUIRED/PROVIDED</u></b> (Per IPC Section 403 & Table 403.1) Occupancy Classification(s) (as shown in Table 5-3): _____ Total Building Design Occupant Load (as shown in Table 5-6): _____				
<b>1. Occupancy:</b> _____ <b>Total Load for this Occupancy:</b> _____ <b>Male:</b> _____ <b>Female:</b> _____				
	<b>Male-REQUIRED</b>	<b>Female-REQUIRED</b>		
Water Closets/ Urinals*	_____ (# Urinals allowed _____)	_____		
Lavatories	_____	_____		
<b>OTHER FIXTURES (Per IPC Section 403 &amp; Table 403.1)</b>		<b>REQUIRED</b>		
Drinking Fountains		_____		
Unisex Toilet		_____		
Service Sink		_____		
Other (list) _____		_____		
<b>2. Occupancy:</b> _____ <b>Total Load for this Occupancy:</b> _____ <b>Male:</b> _____ <b>Female:</b> _____				
	<b>Male-REQUIRED</b>	<b>Female-REQUIRED</b>		
Water Closets/ Urinals*	_____ (# Urinals allowed _____)	_____		
Lavatories	_____	_____		
<b>OTHER FIXTURES (Per IPC Section 403 &amp; Table 403.1)</b>		<b>REQUIRED</b>		
Drinking Fountains		_____		
Unisex Toilet		_____		
Service Sink		_____		
Other (list) _____		_____		
<b>3. Occupancy:</b> _____ <b>Total Load for this Occupancy:</b> _____ <b>Male:</b> _____ <b>Female:</b> _____				
	<b>Male-REQUIRED</b>	<b>Female-REQUIRED</b>		
Water Closets/ Urinals*	_____ (# Urinals allowed _____)	_____		
Lavatories	_____	_____		
<b>OTHER FIXTURES (Per IPC Section 403 &amp; Table 403.1)</b>		<b>REQUIRED</b>		
Drinking Fountains		_____		
Unisex Toilet		_____		
Service Sink		_____		
Other (list) _____		_____		
<b>TOTAL BUILDING COUNT (add all occupancies)</b>				
	<b>Male-REQUIRED</b>	<b>Male-PROVIDED</b> (round up # Required)	<b>Female-REQUIRED</b>	<b>Female-PROVIDED</b> (round up # Required)
Total Water Closets/ Urinals*	_____ (# Urinals allowed _____)	_____ (# Urinals provided _____)	_____	_____
Total Lavatories	_____	_____	_____	_____
<b>OTHER FIXTURES (Per IPC Section 403 &amp; Table 403.1)</b>			<b>REQUIRED</b>	<b>PROVIDED</b> (round up)
Total Drinking Fountains			_____	_____
Total Unisex Toilets			_____	_____
Total Service Sinks			_____	_____
Total Other (list) _____			_____	_____

\* Urinals – See IPC 419.2

**TABLE 11 MECHANICAL INFORMATION****AIR COMFORT SYSTEMS**

Overall Thermal Transfer Value (OTTV): \_\_\_\_\_ BTU/(HR x °F x SF)

Building Cooling Load: \_\_\_\_\_ SF / Ton

Building Heating Load: \_\_\_\_\_ BTU/(HR x SF)

**OTHER LOADING FEATURES**

Glass: \_\_\_\_\_ U Factor: \_\_\_\_\_ Window to wall ratio: \_\_\_\_\_

Insulation Values: \_\_\_\_\_ Roof: \_\_\_\_\_ Exterior Walls: \_\_\_\_\_

Outside Air minimum while occupied: \_\_\_\_\_ CFM \_\_\_\_\_ Occupants

**MECHANICAL SYSTEMS, SERVICE SYSTEMS & EQUIPMENT**

Briefly describe mechanical system: \_\_\_\_\_

<b>TABLE 12 ELECTRICAL INFORMATION</b>			
<b><u>SERVICE TRANSFORMER:</u></b>			
<input type="checkbox"/> By Utility Company	<input type="checkbox"/> By Agency		
	(if by Agency)	_____ KVA Primary	
		_____ Voltage/Phase	
<b><u>ELECTRICAL SERVICE INFORMATION</u></b>			
Service Voltage/Phase:	_____	_____	Amperes
Service Entrance Conductors Size:	_____	_____	Quantity per Phase
Total Connected Load:	_____	_____	KVA
Estimated Maximum Demand:	_____	_____	KVA
Available Fault Current in Symmetrical Amperes:	_____	_____	
Interrupting Capacity of Service Overcurrent Device:	_____	_____	
Grounding Electrode System Components:	_____	_____	(NEC 250)
<b><u>EMERGENCY SERVICE INFORMATION</u></b>			
Emergency Generator:    Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____ KVA	_____ Voltage/Phase _____ Fuel
Exit/Emergency Lights Backup Power	<input type="checkbox"/> Integral Battery	<input type="checkbox"/> Generator	
Fire Alarm System: <input type="checkbox"/> Manual <input type="checkbox"/> Automatic	<input type="checkbox"/> Addressable	<input type="checkbox"/> Class A <input type="checkbox"/> Class B	
<b>LIGHTNING PROTECTION PROVIDED</b>			
	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<b>COMMUNICATIONS COORDINATED</b>			
	<input type="checkbox"/> Yes	<input type="checkbox"/> Not Required	
Contact DSIT Network/Infrastructure Planning for applicability at (803) 896-0001			



## DESIGN-RELATED CONSTRUCTION PERMITS/APPROVALS

The following is a list of permits and standards applicable to state construction projects. This is not intended to be a complete list and a permit or standard not listed here may still be applicable.

Agencies and A/Es should use this as a check list for each project by indicating the status of each required permit in the space provided. Include dates of submittal and/or approvals/anticipated approvals. This form may be submitted to OSE when this information is requested; however, it is required. If used, it must show only those permits relative to the project.

TYPE OF DEVELOPMENT	SC LAW / REGULATION	WHERE TO OBTAIN PERMIT/APPROVAL	STATUS
Air pollutant discharge	48-1-100; R61-62.1	SCDHEC - Air Quality Control	_____
Ambulatory surgical facilities	R61-91	SCDHEC - Health Facilities Construction	_____
Asbestos abatement	R61-86.1	SCDHEC - Air Quality Control	_____
Building construction, Zoning	6-7-10; 6-9-110	Local Authority	_____
Community residential care facilities	R61-84	SCDHEC - Health Facilities Construction	_____
Construction in critical coastal areas	48-39-10, 130, 190	SCDHEC - OCRM	_____
Construction in navigable waters	49-1-16	SCDHEC - Water Pollution Control	_____
Dams and reservoirs	49-11-200; R72-1, 2, 3	SCDHEC - Water Pollution Control	_____
Demolition of Real Property	R61-86.1	SCDHEC - Air Quality Control	_____
Design Review Board (BARs, SC Dept Archives & History, etc.)	Various local	Various local	_____
Educational facilities (K - 12)	59-23-210	SC Dept. of Ed. – Office of School Facilities	_____
Elevators	41-16-90	SC Department of LLR	_____
Fire Department (Local)	Various local	Servicing Fire Department	_____
Fire Protection Sprinkler	40-10	State Fire Marshal	_____
Fire suppression systems	R71-8303	State Fire Marshal	_____
Floodplains, construction in	OSE Manual Chpt 5	Office of State Engineer	_____
Food service establishments	R61-25	SCDHEC – Local County Health Dept.	_____
Historical building rehabilitation	R12-125	Archives and History, Local Authority	_____
Hospitals & infirmaries	R61-16	SCDHEC - Health Facilities Construction	_____
Road encroachment, local	57-7-60	Local City or County Authority	_____
Road encroachment, state	57-5-1080	Local SCDOT Maintenance Office	_____
Sanitary sewer; treatment & disposal	R61-56, 57	SCDHEC – Domestic Wastewater	_____
Storm water discharge, erosion and sediment control	R61-9; R72-100-108	SCDHEC – Water Pollution Control; State Engineer; Local Authority	_____
Swimming areas, natural public	R61-50	SCDHEC – Water Supply Construction	_____
Swimming pools, public	R61-51	SCDHEC – Water Supply Construction	_____
Underground storage tanks	R61-92	SCDHEC – Groundwater Protection	_____
Waste discharge (sewage, industrial waste, etc.)	48-1-100, 110; R61-9	SCDHEC – Water Pollution Control	_____
Water supply	44-55-40; R61-57, 58	SCDHEC – Water Supply Construction	_____
Wells, Underground injection	R61-71, 87	SCDHEC – Groundwater Protection	_____

# **Pre-qualification Handbook**

***For Construction Bidding***

State of South Carolina

**Office of State Engineer**

2011 Edition

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## **I. IMPORTANT PROVISIONS OF THE LAW**

Section 11-35-3023 of the South Carolina Consolidated Procurement Code allows the State to limit participation in a solicitation for construction to only those businesses, including potential subcontractors that are pre-qualified.

- The statute requires that the Office of State Engineer (OSE) develop procedures agencies must use for the pre-qualification of potential offerors.
- Regulation 19-445.2145(G) requires that the procedure and criteria developed by the Office of State Engineer be incorporated into the *Manual for Planning and Execution of State Permanent Improvements—Part II*.
- The prequalification process may only be used with the approval and under the supervision of the OSE
- For a design-bid-build project, the prequalification process may be used upon written determination of the State Engineer that the project is either:
  - a. Over \$10,000,000 in construction value; or,
  - b. Unique in nature.
- On a design-bid-build project, offers must be sought from all offerors that meet the published minimum requirements for prequalification.
- The decision to not prequalify a particular offer is protestable. The standard of review is the same as for a determination of non-responsibility. See *SC Code Ann § 11-35-2410*.
- If fewer than two businesses are prequalified, the prequalification process must be canceled.

This Handbook is issued pursuant to the authorities cited above and is a part of the *Manual for Planning and Execution of State Permanent Improvements—Part II*. The provisions of this Handbook are applicable to state agencies who use pre-qualification as a part of the competitive sealed bidding process as defined in SC Code §11-35-3020 or the competitive sealed proposal process SC Code § 11-35-1530.

## **II. OVERVIEW OF THE PRE-QUALIFICATION DOCUMENTS**

This Handbook contains documents designed to help the Agency solicit statements of qualifications and to collect the information that an agency will need to carry out a pre-qualification procedure and to establish a fair, objective, and consistent statewide standard for evaluating potential offerors.

### **1. Model Prequalification Information Packages**

The prequalification process requires public notice and the solicitation of responses from prospective offerors. These responses are hereinafter referred to as statements of qualifications. The typical *SCBO* notice provides limited, basic information and refers to an information package that is available to interested parties. The first sample information package addresses the prequalification of potential bidders when the source selection method is competitive sealed bidding. The second sample addresses the prequalification of potential offerors when the source selection method is competitive sealed proposals. The following documents are a part of each Model Prequalification Information Package.

**a. Contractor’s Qualification Questionnaire**

The questionnaire includes spaces for answers the contractors are to provide on the forms that they are to return to the agency.<sup>1</sup> This questionnaire includes requirements for prospective bidders to submit certain documentation with the completed questionnaire. The completed questionnaire and required documentation constitute a prospective bidder’s statement of qualifications.

**b. Past Performance Interview Questions**

This is a list of thirteen questions the Agency is to ask the contractor’s past performance references. The agency may, in its sole discretion, ask additional questions to ensure full understanding of the responses offered by the past performance references.

**c. Instructions for Past Performance Interviews**

This document defines process the agency’s designated interviewer should use for conducting the reference interviews.

**d. The Scoring Process**

This document defines the minimum requirements for pre-qualification; the list of questions the agency is to score; and the associated point structures. In competitive sealed bidding, all potential bidders who meet the minimum requirements must be permitted to bid the work. In competitive sealed proposals, the Agency will rank the potential offers from most qualified to least qualified. In the latter case, the Agency may limit competition to a specified number (OSE recommends a minimum of three) of the highest ranked offerors.

**e. Pre-qualification Scoring Matrix**

The agency is to use the scoring matrix for summarizing the scores assigned during the agency’s rating of the responses submitted by the contractors and references.

**2. Sources for Verification of Information**

This section of the Handbook provides a list of sources of information that an agency may use to verify the accuracy of many of the answers given by the contractors to the questions on the questionnaire. Contractors seeking pre-qualification provide information to public agencies under oath, with the understanding that the intentional

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<sup>1</sup> The documents included in this package are on the OSE Web site, [www.state.sc.us/mmo/ose/osemenu.htm](http://www.state.sc.us/mmo/ose/osemenu.htm).

providing of false information is grounds for disqualification. The agency will and should generally accept contractor provided information at face value. The agency may use the list of sources of information in the few instances in which an agency reviewing the answers given in a questionnaire has specific reason to believe it should verify one or more answers.

### III. PROTEST RIGHTS

As provided in §11-35-2410, the determination of which potential offerors meet minimum standards of prequalification and the ranking of qualified potential offerors from most qualified to least qualified is protestable under §11-35-4210.

### IV. MODEL SCBO ADVERTISEMENT FOR CONTRACTOR PREQUALIFICATION

#### A. COMPETITIVE SEALED BIDDING:

#### Request for Qualifications

Project Name:

Project Number:

Project Delivery Method: Design-Bid-Build

Agency name:

Agency location:

Notice is hereby given that [Agency Name] (hereinafter “Agency”) has determined that all [prime contractors – prime contractors and listed subcontractors – listed subcontractors] (hereinafter collectively referred to as “Contractors” and individually as “Contractor”) on the above named Project to be undertaken by the Agency must be pre-qualified prior to submitting a bid on this project. It is mandatory that all Contractors who intend to submit a bid shall fully complete a qualification questionnaire; provide all materials requested therein; and be approved by Agency to be on the final qualified Contractors list. (The qualification questionnaire and materials requested herein are hereinafter collectively referred to as the “statement of qualifications”). No bid will be accepted from a Contractor that has failed to comply with these requirements. The last date to submit a complete statement of qualifications is [mm/dd/yy] [at least 35 days prior to the bid closing date]. Interested parties may obtain an Information Package containing instructions for preparation and delivery of the statement of qualifications from *[include agency contact person information]*. Statements of qualification are to be submitted to the agency no later than *[include delivery date and time]*.

#### PROJECT DESCRIPTION

*Provide a one- or two-paragraph description of the general scope of the project, including the most current construction budget and construction time.*

Construction disciplines required for the project include, but are not limited to:

*Provide a listing of the trade specialties required or anticipated based on the current design documents.*

## B. COMPETITIVE SEALED PROPOSALS:

### Request for Qualifications

Project Name:

Project Number:

Project Delivery Method: [*Design-Build - other*]

Agency name:

Agency location:

Notice is hereby given that [Agency Name] (hereinafter “Agency”) has determined that all [design-builders - construction managers at risk – energy service companies] (hereinafter “Offerors”) on the above named Project to be undertaken by the Agency must be pre-qualified prior to submitting a proposal on this project. It is mandatory that all Offerors desiring to submit a proposal shall fully complete a qualification questionnaire; provide all materials requested therein; and be approved by Agency to be on the final qualified Offerors list. (*The qualification questionnaire and materials requested herein are hereinafter collectively referred to as the “statement of qualifications”*). No proposal will be accepted from a Contractor that has failed to comply with these requirements. The last date to submit a complete statement of qualifications is [mm/dd/yy] [*at least 35 days prior to the bid closing date*]. Interested parties may obtain an Information Package containing instructions for preparation and delivery of the statement of qualifications from [*include agency contact person information*]. Statements of qualification are to be submitted to the agency no later than [*include delivery date and time*].

Using only the criteria stated in the request for qualifications, the Agency will rank Offerors from most qualified to least qualified. The Agency will solicit proposals from only the [*insert #*] most qualified Offerors.

#### PROJECT DESCRIPTION

*Provide a one- or two-paragraph description of the general scope of the project, including the most current construction budget and construction time.*

Construction disciplines required for the project include, but are not limited to:

*Provide a listing of the design professionals and/or trade specialties required or anticipated based on the program.*



## V. MODEL INFORMATION PACKAGES

### A. COMPETITIVE SEALED BIDDING:

The agency must provide the following information package to any interested party based on a published SCBO notice for pre-qualification of prime contractors only. The Agency should modify this document to address whether the Agency will prequalify specified subcontractors as well as prime contractors or even prequalify specified subcontractors without prequalifying prime contractors. The Questionnaire may require modification due to project-specific circumstances such as licensing, bonds, and insurance requirements. OSE will assist the agency in making any changes.

REQUEST FOR STATEMENTS OF QUALIFICATIONS FROM [PRIME CONTRACTORS – PRIME CONTRACTORS AND LISTED SUBCONTRACTORS – LISTED SUBCONTRACTORS] FOR FORTHCOMING CONSTRUCTION PROJECT

Project Name:  
Project Number:  
Project Delivery Method: Design-Bid-Build  
Agency name:  
Agency location:

Notice is hereby given that [Agency Name] (hereinafter “Agency”) has determined that all [prime contractors – prime contractors and listed subcontractors – listed subcontractors] (hereinafter collectively referred to as “Contractors” and individually as “Contractor”) on the above named Project to be undertaken by the Agency must be pre-qualified prior to submitting a bid on that project. It is mandatory that all Contractors who intend to submit a bid shall fully complete the qualification questionnaire; provide all materials requested herein; and be approved by Agency to be on the final qualified Contractors list. (The qualification questionnaire and materials requested herein are hereinafter collectively referred to as the “statement of qualifications”). No bid will be accepted from a Contractor that has failed to comply with these requirements. If two or more business entities plan to submit a bid as part of a Joint Venture, each entity within the Joint Venture must be separately qualified to bid. The last date to submit a complete statement of qualifications is [mm/dd/yy] [at least 35 days prior to the bid closing date]. Contractors are encouraged to submit statements of qualifications as soon as possible, so that they may be notified of their pre-qualification status well in advance of the bid advertisement for this project.

In order to be prequalified to bid, a Contractor must receive a minimum score of \_\_\_\_\_ on the Prequalification Scoring Matrix which is a part of the statement of qualifications.

### PROJECT DESCRIPTION

*Provide a one- or two-paragraph description of the general scope of the project, including the most current construction budget and construction time.*

Construction disciplines required for the project include, but are not limited to:

*Provide a listing of the trade specialties required or anticipated based on the current design documents.*

**[Note: If Agency is prequalifying listed subcontractors, insert the following, otherwise proceed to Project Information:**

#### LISTED SUBCONTRACTORS

Agency has determined that the qualifications and experience of firms providing the work associated with the following crafts or trades are a critical element in ensuring the successful completion of the Project and any such firm seeking to provide a sub-bid on this project must be prequalified.

*Provide a list of those trade specialties that will be subject to pre-qualification.]*

#### PROJECT INFORMATION

Information regarding the project can be obtained from [\[insert name, affiliation and contact information for the Agency\]](#). Draft plans and specifications are available from [\[insert contact information\]](#). Draft plans and specifications are available on the agency website at [\[insert the URL or delete this sentence if not applicable\]](#). **NOTE: The draft plans and specifications are informational only and shall not be used for bidding or estimating purposes.**

Answers to questions contained in the attached questionnaire, information about current bonding capacity, notarized statement from surety, and the most recent reviewed or audited financial statements, with accompanying notes and supplemental information, are all required. Agency will use these documents as the basis of rating Contractors in respect to the size and scope of the Project. Agency reserves the right to check other sources available and to incorporate that information into Agency's final decision.

Agency reserves the right to adjust, increase, limit, suspend or rescind the pre-qualification rating based on subsequently learned information. Contractors whose rating changes are sufficient to disqualify them will be notified and afforded an opportunity to submit mitigating information. The Agency's decision on such matters is final.

While it is the intent of the qualification questionnaire and documents required therewith to assist Agency in determining contractor responsibility prior to bid and to aid Agency in selecting the lowest responsive and responsible contractor, neither the fact of pre-qualification, nor any pre-qualification rating, will preclude Agency from a post-bid consideration and determination of whether a pre-qualified contractor meets the State's standards for responsibility.

The statement of qualifications must be submitted under seal and marked "CONFIDENTIAL" to [\[name and address\]](#). Marking the envelope "CONFIDENTIAL" merely notifies Agency

personnel that the envelope or box contains confidential information and is not sufficient to protect the contents from disclosure under the Freedom of Information Act. In order to protect confidential information in the statement of qualifications or confidential information submitted with the statement, each Offeror must follow the procedures set forth below.

**NOTICE: SUBMITTING CONFIDENTIAL INFORMATION** — For every document Contractor submits in response to or with regard to this request, Contractor must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Contractor contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in S.C. Code §30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in S.C. Code §11-35-410. For every document Contractor submits in response to or with regard to this request, Contractor must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Contractor contends contains a trade secret as that term is defined by S.C. Code §39-8-20 of the Trade Secrets Act. For every document Contractor submits in response to or with regard to this request, Contractor must separately mark with the word "PROTECTED" every page, or portion thereof, that Contractor contends is protected by S.C. Code §11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (statement of qualifications and accompanying documentation.) as confidential, trade secret, or protected! If your response or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it non-responsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this request, Contractor (1) agrees to the public disclosure of every page of every document regarding this request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response and documents submitted to clarify a response), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", and (2) agrees that any information not marked, as required by these instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act. In determining whether to release documents, the State will detrimentally rely on Contractor's marking of documents, as required by these instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Contractor agrees to defend, indemnify and hold harmless the State of South Carolina, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Contractor marked as "confidential" or "trade secret" or "PROTECTED". Notwithstanding any markings to the contrary, by signing this document you consent to the disclosure of the contents to those third parties that may be able to verify the item of information at issue.

Each questionnaire must be signed under penalty of perjury in the manner designated at the end of the form, by an individual who has the legal authority to bind the Contractor on whose behalf that person is signing. If any information provided by a Contractor becomes inaccurate, the Contractor must immediately notify Agency and provide updated accurate information in writing, under penalty of perjury.

Contractors may submit statements of qualifications during regular working hours on any day that the offices of Agency are open. Contractors who submit a complete statements of qualifications will be notified of their qualification status no later than ten business days after close of receipt of the submittals.

Agency may refuse to grant pre-qualification where the requested information and materials are found to be false, or are not provided by [mm/dd/yy]. [*date specified in first paragraph – at least 35 days before bid closing*] The closing time for bids will not be changed in order to accommodate supplementation of incomplete submissions or late submissions.

## **B. COMPETITIVE SEALED PROPOSALS:**

The agency must provide the following information package to any interested party based on a published SCBO notice for pre-qualification of offerors. The Agency should modify this document to address whether the Agency will prequalify specified subcontractors that are a part of an offerors team. The Questionnaire may require modification due to project-specific circumstances such as licensing, bonds, and insurance requirements. OSE will assist the agency in making any changes.

### REQUEST FOR STATEMENTS OF QUALIFICATIONS FROM [DESIGN-BUILDERS – ENERGY SERVICE COMPANIES - OTHER] FOR FORTHCOMING CONSTRUCTION PROJECT

Project Name:

Project Number:]

Project Delivery Method: [*Design-Build –other*]

Agency name:

Agency location:

Notice is hereby given that [Agency Name] (hereinafter “Agency”) has determined that all [design-builder - energy service companies -other] (hereinafter referred to as “Offerors”) on the above named Project to be undertaken by the Agency must be pre-qualified prior to submitting a proposal on this project. It is mandatory that all Offerors who intend to submit a proposal shall fully complete the qualification questionnaire; provide all materials requested herein; and be approved by Agency to be on the final qualified Offerors list. (*The qualification questionnaire and materials requested herein are hereinafter collectively referred to as the “statement of qualifications”*). No proposal will be accepted from an Offeror that has failed to comply with these requirements. If two or more business entities plan to submit a proposal as part of a Joint Venture, each entity within the Joint Venture must be separately qualified. The last date to submit a complete statement of qualifications is [mm/dd/yy] [*at least 35 days prior to the bid closing date*].

Using only the criteria stated in the request for qualifications, the Agency will rank Offerors from most qualified to least qualified. The Agency will solicit proposals from only the \_\_\_\_[insert #] most qualified Offerors.

## PROJECT DESCRIPTION

*Provide a one- or two-paragraph description of the general scope of the project, including the most current construction budget and construction time.*

Construction disciplines required for the project include, but are not limited to:

*Provide a listing of design professionals and trade specialties required or anticipated based on the current program requirements.*

**[Note: If Agency is prequalifying subcontractors, insert the following, otherwise proceed to Project Information:**

## SUBCONTRACTORS

Agency has determined that the qualifications and experience of firms providing services and/or work associated with the following professions, crafts, or trades are a critical element in ensuring the successful completion of the Project. Any firm that the Offeror intends to subcontract with for such services and/or work must be prequalified. Offerors must submit statements of qualifications for such firms along with their own statement of qualifications.

*Provide a list of those professions and/or trade specialties that will be subject to pre-qualification.]*

## PROJECT INFORMATION

Information regarding the project can be obtained from [\[insert name, affiliation and contact information for the Agency\]](#). A project description [*and program statement – design requirements*] is/are available from [\[insert contact information\]](#). A project description [*and program statement – design requirements*] is/are available on the agency website at [\[insert the URL or delete this sentence if not applicable\]](#). **NOTE: Project description [*and program statement*] is/are are informational only and shall not be used for proposal preparation.**

Answers to questions contained in the attached questionnaire, information about current bonding capacity, notarized statement from surety, and the most recent reviewed or audited financial statements, with accompanying notes and supplemental information, are all required. Agency will use these documents as the basis of rating Offerors in respect to the size and scope of the Project. Agency reserves the right to check other sources available and to incorporate that information into Agency's final decision.

Agency reserves the right to adjust, increase, limit, suspend or rescind the pre-qualification rating based on subsequently learned information. Offerors whose rating changes are sufficient to disqualify them will be notified and afforded an opportunity to submit mitigating information. The Agency's decision on such matters is final.

While it is the intent of the qualification questionnaire and documents required therewith to assist Agency in determining the most qualified offerors prior to soliciting proposals, neither the fact of

pre-qualification, nor any pre-qualification rating, will preclude Agency from a post-proposal consideration and determination of whether a pre-qualified offeror meets the State's standards for responsibility.

The statement of qualifications must be submitted under seal and marked "CONFIDENTIAL" to [\[name and address\]](#). Marking the envelope "CONFIDENTIAL" merely notifies Agency personnel that the envelope or box contains confidential information and is not sufficient to protect the contents from disclosure under the Freedom of Information Act. In order to protect confidential information in the statement of qualifications or confidential information submitted with the statement, each Offeror must follow the procedures set forth below.

**NOTICE: SUBMITTING CONFIDENTIAL INFORMATION — For every document Offeror submits in response to or with regard to this request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in S.C. Code §30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in S.C. Code §11-35-410. For every document Offeror submits in response to or with regard to this request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by S.C. Code §39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by S.C. Code §11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (statement of qualifications and accompanying documentation) as confidential, trade secret, or protected! If your response or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it non-responsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this request, Offeror (1) agrees to the public disclosure of every page of every document regarding this request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response or documents submitted to clarify a response), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", and (2) agrees that any information not marked, as required by these instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". Notwithstanding any markings to the contrary, by signing this document you consent to the disclosure of the contents to those third parties that may be able to verify the item of information at issue.**

Each questionnaire must be signed under penalty of perjury in the manner designated at the end of the form, by an individual who has the legal authority to bind the Offeror on whose behalf that person is signing. If any information provided by an Offeror becomes inaccurate, the Offeror must immediately notify Agency and provide updated accurate information in writing, under penalty of perjury.

Offerors may submit statements of qualifications during regular working hours on any day that the offices of Agency are open. Offerors who submit a complete statements of qualifications will be notified of their qualification status no later than ten business days after close of receipt of the submittals.

Agency may refuse to grant pre-qualification where the requested information and materials are found to be false, or are not provided by [\[mm/dd/yy\]](#). *[date specified in first paragraph – at least 35 days before bid closing]*.

**CONTRACTOR'S QUALIFICATION QUESTIONNAIRE  
FOR COMPETITIVE SEALED BIDDING**

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**Applicant Name:** \_\_\_\_\_

Tax ID No. \_\_\_\_\_ or SS No. \_\_\_\_\_

DUNS No. \_\_\_\_\_

***DUNS (Data Universal Numbering System) NUMBER:** The DUNS Number is a distinctive nine-digit identification number assigned to the firm by Dun & Bradstreet Information Services. If the applicant does not have a DUNS number, it should contact Dun & Bradstreet directly to obtain one. A DUNS number will be provided to the firm within seven to ten business days. For information on obtaining a DUNS number, the firm, if located in the United States, should call Dun & Bradstreet at 1-800-333-0505.*

D/B/A Name (if any) \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

Email: \_\_\_\_\_

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Contractors must fully complete the Questionnaire and provide all requested information. If the pre-qualification process for a specific project includes the pre-qualification of subcontractors, then each subcontractor must submit a completed questionnaire. A submission that is incomplete, unsigned, or does not contain the required supplemental material may result in disqualification of the contractor.

This process is a responsibility determination. Minimum requirements necessary to prequalify are that the applicant has (1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements; (2) a satisfactory record of performance; (3) a satisfactory record of integrity; (4) qualified legally to contract with the State; and (5) supplied all necessary information in connection with the inquiry concerning pre-qualification (responsibility). *See SC Code Ann Regs 19-445.2125(A).*

Supplemental information provided with responses to the questions set forth herein will be used by the procurement officer to analyze the responsibility of the applicant firm. *See SC Code Ann Regs 19-445.2125(A).* The scoring of scorable questions in the questionnaire assist in the determination that the minimum requirements for responsibility are met; however, if the procurement officer in the exercise of his discretion believes the supplemental information supports a determination of non-responsibility, he may disqualify the applicant firm from bidding on the project.

Pursuant to SC Code Ann § 11-35-1810 and Regs. 19-445.2125, the State may evaluate the responsibility of a contractor at any time up to award including asking for supplemental information to responses provided herein. The contractor shall supply such information upon request.

**PART I – GENERAL BUSINESS INFORMATION**



*Note: Information provide in response to this section may be used to confirm answers given in other sections and to conduct an investigation of the history of performance of the firm and/or its owners and affiliated firms. An investigation that reveals a history of poor performance by the firm or its owners may, at the discretion of the procurement officer, be grounds for disqualification as non-responsible.*

**1. BUSINESS ORGANIZATION OF APPLICANT**

Date the applicant firm was formed \_\_\_\_\_

Type of Organization

- Corporation  
State in which incorporated \_\_\_\_\_ Year \_\_\_\_\_
- Limited Liability Company  
State in which organized \_\_\_\_\_ Year \_\_\_\_\_
- Partnership
  - General  Limited
  - State and County where partnership filed \_\_\_\_\_
- Sole Proprietorship  
Owner \_\_\_\_\_
- Joint Venture (hereinafter, "Firm")  
Provide the names, Tax ID No., and DUNS No. for each member of the Joint Venture \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. PRINCIPALS AND KEY PERSONNEL IN FIRM** - On the chart below, complete the required information. "Principals" and "Key Personnel" include any of the following:

- Proprietors, partners, directors, officers
- Any manager or individual who participates in overall policy-making or financial decisions for the firm
- Any person in a position to control and direct the firm's overall operations or any significant part of it's operation
- The firms qualifying party for purposes of South Carolina licensure.

Applicant firms that are publicly held corporations should list the president, treasurer, and only those officers and managers who will have direct responsibility for the project.

a. Principals and Key Personnel (use additional paper if necessary)

	Person 1	Person 2	Person 3
Name			
Title			
% of Ownership			
No. of shares owned			

b. At present, do any of the Principals or Key Personnel listed in Question No. 8a own 25% or more of any other firm?

Yes  No

If “Yes”, list below (use additional paper if necessary)

Person	Firm Name	Address	Tax ID No.	% Owned

c. Has any owner, partner, qualifying party or (for corporations:) officer of your firm operated a construction firm (other than a firm listed in b above) under any other name in the last five years?

Yes  No

If “Yes”, list below (use additional paper if necessary)

Person	Firm Name	Address	Tax ID No.	% Owned

d. Has there been any change in ownership of the firm at any time during the last three years? A corporation whose shares are publicly traded and of which no single person or entity owns more than 25% may check “No.”

Yes  No

If “Yes,” explain on a separate signed page.

e. Is the firm a subsidiary, parent, holding company or affiliate of another construction firm?

Yes  No

If “Yes,” explain on a separate signed page. Include information about other firms if one firm owns 50 per cent or more of another, or if an owner, partner, officer or qualifying party of your firm holds a similar position in another firm.

d. Firm’s gross revenues for each of the last three years:

Year			
Gross Revenue			

e. Has your firm changed names or license number in the past five years?

Yes  No

If “Yes,” explain on a separate signed page. Include the reason for the change.

**3. SOUTH CAROLINA CONTRACTOR’S LICENSE(S):**

Number	License Classification	License Group	Qualifying Party

*Firm will be disqualified if firm does not possess a valid and current South Carolina Contractor’s license for the project.*

**4. INSURANCE:**

Name of Primary Insurance Agent or Broker \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ FAX No. \_\_\_\_\_

Type of Coverages

	Commercial Gen. Liability	Auto Liability	Worker’s Comp.	Other
Policy No.				
Name of Carrier				
Amount - Single				
Amount - Aggregate				
Expiration Date				

*Firm will be disqualified if it does not have general comprehensive liability insurance with a policy limit of at least \$1 million per occurrence and \$2 million aggregate. Firm will be disqualified if it does not have worker’s compensation insurance as required by the SC Worker’s Compensation Commission.*

**5. APPLICANT’S BONDING INFORMATION**

Name of Bonding Agent \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ FAX No. \_\_\_\_\_

Name of Bonding Company	Bonding Capacity (Single)	Bonding Capacity (Aggregate)

*Firm will be disqualified if (1) it does not have current bonding capacity sufficient for the project, (2) Surety is not authorized to do business in SC, (3) Surety does not have an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", or (4) Surety does not have a financial strength rating of at least five times the amount of the estimated maximum construction budget set forth in the solicitation.*

## **6. FINANCIAL STATEMENT**

Attach the latest copy of the firms reviewed or audited financial statement with accompanying notes and supplemental information.

*Failure to provide the financial statement will result in disqualification. A financial statement that indicates the firm is not or may not be a going concern may, at the discretion of the procurement officer, result in disqualification.*

## **PART II. ORGANIZATIONAL PERFORMANCE, COMPLIANCE WITH CIVIL AND CRIMINAL LAWS**

**NOTE: Contractor will be immediately disqualified if the answer to any of the questions 1, 2, 3, or 4 is "Yes."**

1. Has your South Carolina contractor's license or contractor's license issued by any other state been revoked at any time in the last five years?

Yes  No

2. Has a surety firm completed a contract on your behalf, or paid for completion because your firm was default terminated by the project owner within the last five (5) years?

Yes  No

3. At the time of submitting this qualification form, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract for the Federal Government or any state?

Yes  No

4. At any time during the last five years, has your firm or any of its owners, officers or qualifying parties been convicted of a crime involving the awarding of a contract of a Federal, State or local government construction project, or the bidding or performance of a Federal, State or local government contract?

Yes  No

5. If your firm was required to pay a premium of more than one percent for a performance and payment bond on any project(s) on which your firm worked at any time during the last three years, state the percentage that your firm was required to pay.

---

*Attach a signed explanation setting forth the name of the surety, contact information for the surety, and the reasons for the premium amount.*

6. During the last five years, has your firm ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

Yes  No

*If “Yes,” attach a signed explanation indicating the date when your firm was denied coverage and the name and contact information of the company or companies which denied coverage; and the period during which you had no surety bond in place.*

7. How many years has your organization been in business as a contractor under your present business name? \_\_\_\_\_ years

8. Is your firm currently the debtor in a bankruptcy case?

Yes  No

*If “Yes,” attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.*

9. Was your firm in bankruptcy at any time during the last five years? (This question refers only to a bankruptcy action that was not described in answer to question 8 above)

Yes  No

*If “Yes,” attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court’s discharge order, or of any other document that ended the case, if no discharge order was issued.*

10. Has any contractor’s license held by your firm or its Qualifying Party been suspended within the last five years?

Yes  No

*If “Yes,” attach a signed explanation listing the issuing state and the license number.*

11. At any time in the last five years, has your firm been assessed or paid delay damages (liquidated or actual) on any public or private construction project?

Yes  No

*If “Yes,” attach a signed explanation identifying all such projects by owner, owner’s address, the date of completion of the project, amount of delay damages assessed and all other information necessary to fully explain the assessment of delay damages. If delay damages were assessed by a general contractor or construction manager provide their name and address.*

12. In the last five years, has your firm, parent firm, any subsidiary firm, or any firm with which any of your firm’s owners, officers, partners or qualifying parties were associated, been debarred, disqualified, removed or otherwise prevented from bidding on, completing, or contracting to perform any government agency or public works project for any reason? “Associated with” refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to questions 3(b) and 3(c) of Part I of this form.

Yes  No

*If “Yes, attach a signed explanation stating whether the firm involved was the firm applying for pre-qualification here or another firm. Identify by name of the company, the name of the person within your firm who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action. Provide contact information for the government agency involved.*

13. In the last five years, has your firm been denied an award of a public works contract based on a finding by any public agency (Federal, state or local) that your firm was not a responsible contractor, i.e., not qualified?

Yes  No

If “Yes,” attach a signed explanation identifying the year of the event, the owner, the project and the basis for the finding by the public agency.

14. In the past five years, has any claim against your firm concerning your firm’s work on a construction project been filed by a project owner in court or other tribunal or otherwise submitted to another party for dispute resolution, such as but not limited to binding arbitration?

Yes  No

If yes, list below (attach a separate sheet if necessary):

Plaintiff/Owner	Court/Tribunal	Case Number	Project	Amount of Claim

If any claim exceeds \$50,000, attach a signed explanation identifying the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court or venue in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

15. In the past five years has your firm made any claim against a project owner concerning work on a project or payment for a contract and filed that claim in court or other tribunal or otherwise submitted the claim to another party for dispute resolution, such as binding arbitration?

Yes  No

If yes, list below (attach a separate sheet if necessary):

Plaintiff/Owner	Court/Tribunal	Case Number	Project	Amount of Claim

If any claim exceeds \$50,000, attach a signed explanation identifying the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court or venue in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

16. At any time during the past five years, has any surety company made any payments on your firm’s behalf as a result of a default to satisfy any claims made against a performance or payment bond issued on your firm’s behalf, in connection with a construction project, either public or private?

Yes  No

If “Yes,” attach a signed explanation setting forth the name and telephone number of the surety, the amount of each such claim, the name and telephone number of the claimant, the date of the claim, the grounds for the claim, the present status of the claim, the date of resolution of such claim if resolved, the method by which such was resolved if resolved, the nature of the resolution and the amount, if any, at which the claim was resolved.

17. In the last five years has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes  No

*If “Yes,” attach a signed explanation setting forth the name of the insurance carrier, the form of insurance and the year of the refusal.*

18. Has your firm or any of its owners, officers, partners or qualifying parties ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?

Yes  No

*If “Yes,” attach a signed explanation identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.*

19. Has your firm or any of its owners, officers, partners or qualifying parties ever been convicted of a crime involving any federal, state, or local law related to construction?

Yes  No

*If “Yes,” attach a signed explanation identifying who was involved, the name of the public agency, the date of the conviction and the grounds for the conviction.*

20. Has your firm or any of its owners, officers, partners or qualifying parties ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

Yes  No

*If “Yes,” attach a signed explanation identifying the person or persons convicted, the court (the county if a state court, the district or location of the federal court), the year and the criminal conduct.*

21. Has any OSHA (Federal or state) cited and assessed penalties against your firm for any “serious,” “willful” or “repeat” violations of its safety or health regulations in the past five years? Do not include citations for which an appeal is pending; however, notify the state if at any time prior to bid opening, the citation is upheld on appeal so that the state may recalculate your score on this form.

Yes  No

*If “Yes,” attach a signed explanation describing the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed and a decision has been issued, state the case number and the date of the decision.*

22. Has any OSHA (Federal or state) cited and assessed penalties against your firm in the past five years for violations of its safety or health regulations that were not “serious,” “willful” or “repeat” violations? Do not include citations for which an appeal is pending; however, notify the state if at any time prior to bid opening, the citation is upheld on appeal so that the state may recalculate your score on this form.

Yes  No

*If “Yes,” attach a signed explanation describing each citation, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed and a decision has been issued, state the case number and the date of the decision.*

23. Has the US Environmental Protection Agency, or any state or regional environmental agency cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor in the past five years? Do not include citations for which an appeal is pending; however, notify the state if at any time prior to bid opening, the citation is upheld on appeal so that the state may recalculate your score on this form.

Yes  No

*If “Yes,” attach a signed explanation describing each citation, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed and a decision has been issued, state the case number and the date of the decision.*

24. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project?

\_\_\_\_\_

25. List your firm’s Experience Modification Rate (EMR) for each of the past three premium years:

Current year: \_\_\_\_\_

Previous year: \_\_\_\_\_

Year prior to previous year: \_\_\_\_\_

*If your EMR for any of these three years is or was 1.00 or higher, attach a signed explanation.*

26. Within the last five years has there ever been a period when your firm had employees but was without workers’ compensation insurance or state-approved self-insurance? Provide a statement by your current workers’ compensation insurance carrier that verifies periods of workers’ compensation insurance coverage for the last five years. If your firm has been in the construction business for less than five years, provide a statement by your workers’ compensation insurance carrier verifying continuous workers’ compensation insurance coverage for the period that your firm has been in the construction business.

Yes  No

*If “Yes,” attach a signed explanation setting forth the dates your firm was without workers’ compensation insurance and why your firm did not have coverage.*

27. Has there been more than one occasion during the last five years in which your firm was required to pay either back wages or penalties for your own firm’s failure to comply with federal or state wage and hour laws including the Federal Davis-Bacon Act?

Yes  No

*If “Yes,” attach a signed explanation describing the nature of each violation, identifying the name of the project, the date of its completion, the entity for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.*

**PART III – PAST PERFORMANCE/RECENT CONSTRUCTION PROJECTS COMPLETED**

Contractor shall provide information about its five most recently completed projects where the contract price was within 10% of the construction budget for this project or greater. If the preceding list does not include a public project, and the Contractor has completed one or more public projects in the past five years, Contractor shall also provide information about the two (or one if there was only one such project) largest public projects completed within the last five years.<sup>2</sup> Names and references must be current and verifiable. Use separate sheets of paper that contain all of the following information:

Project Name	
--------------	--

<sup>2</sup> If you wish, you may, using the same format, also provide information about other projects that you have completed that are similar to the project(s) for which you expect to bid.



Project Location	
Owner's Name	
Owner Contact Name & Telephone No.	
Architect/Engineer	
Architect/Engineer Contact Name & Telephone No.	
Type of Project	
Total Value of Construction	
Construction Manager Name & Telephone No.	
Original Scheduled Completion Date	
Time Extensions Granted (number of days)	
Actual Date of Completion	

**PART IV. SPECIAL EXPERIENCE REQUIREMENTS**

[Insert questions developed for and related to special experience requirements.]

Projects that are unique in nature may have specific experience requirements not otherwise addressed by the above questions. Therefore, the Agency may develop a list of questions specifically related to experience on similar construction projects. Before including these additional questions in the questionnaire, the Agency must obtain OSE's approval.]

**CONTRACTOR'S CERTIFICATION**

I, the undersigned, certify and declare that I have read all the foregoing answers to this qualification questionnaire and know their contents. The matters stated in the questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of South Carolina, that the foregoing is correct.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Name)

Title: \_\_\_\_\_

### **PART III**

#### **PAST PERFORMANCE INTERVIEW QUESTIONS**

The following questions will be used by the agency to initiate the interview of contacts from at least three randomly selected projects from those listed in the contractor's response to the Questionnaire. No action by the contractor is necessary. These questions are provided to the contractor for information only.

1. Are there any outstanding stop notices, liens, or claims by the contractor that are currently unresolved on contracts for which notices of completion were recorded more than 120 days ago? (1 point for each is deducted from overall score; maximum amount to be deducted is 5 points)
2. On a scale of 1-10, with 10 being the best, did the contractor provide adequate personnel? (Max. 10 points)
3. On a scale of 1-10, with 10 being the best, did the contractor provide adequate supervision? (Max. 10 points)
4. On a scale of 1-10, with 10 being the best, was there adequate equipment provided on the job? (Max. 10 points)
5. On a scale of 1-10, with 10 being the best, was the contractor timely in providing reports and other paperwork, including change order paperwork and scheduling updates? (Max. 10 points)
6. On a scale of 1-10, with 10 being the best, did the contractor adhere to the project schedule that your [agency] [business] approved? (Max. 10 points)
7. Was the project completed on time? (10 points if the answer is "Yes").  
Or, if the answer is "no," on a scale of 1-10, with 10 being the best, to what extent was the contractor responsible for the delay in completion? (Max. 10 points)
8. On a scale of 1-10, with 10 being the best, rate the contractor on the timely submission of reasonable cost and time estimates to perform change order work. (Max. 10 points)
9. On a scale of 1-10, with 10 being the best, rate the contractor on how well the contractor performed the work after a change order was issued, and how well the

contractor integrated the change order work into the existing work. (Max. 10 points)

10. On a scale of 1-10, with 10 being the best, rate how has the contractor been performing in the area of turning in Operation & Maintenance manuals, completing as-built drawings, providing required training and taking care of warranty items? (Max. 10 points)
11. On a scale of 1-10, with 10 being the best, rate the contractor on whether there were an unusually high number of claims, given the nature of the project, or unusual difficulty in resolving them. (Max. 10 points)
12. On a scale of 1-10, with 10 being the highest, rate the contractor with respect to timely payments by the contractor to either subcontractors or suppliers. (If the person being interviewed knows of no such difficulties, the score on this question should be "10.")
13. On a scale of 1-10, with 10 being the best, how would you rate the quality of the work overall? (Max. 10 points)

## **INSTRUCTIONS FOR PAST PERFORMANCE INTERVIEWS**

These instructions are meant to assist the public agency in conducting the interviews of the managers of projects previously completed (that is, the people who supervised the projects for the project owners) by the contractor wishing to pre-qualify. The interview questions allow qualitative review of work performance for contractors who choose to bid and pre-qualify for public works contracts. The agency should use the interview questions to examine randomly selected contacts from at least three completed past projects.

- The agency should select an individual who, at a minimum, has a basic knowledge of public works construction. While conducting the interview, the interviewer should be consistently neutral in the way he/she presents the questions. If the interviewer changes the way he/she presents question during the review, it could potentially change the way the respondent answers the questions and jeopardize the overall scoring.
- The interviewer should not use examples or deviate from the questions unless the interviewee is unclear and requests further explanation. The interviewer should offer additional explanation of the questions only if sure of the intent of the question in the interview.

- The interviewer should attempt to first contact those listed as contacts by the contractor. The interviewer should be aware that for a complete interview regarding a single project he/she may need to interview multiple individuals. That is, the interviewer may have to contact multiple individuals, such as the project manager concerning the building process, and a financial manager for warranty items, assessed liens, and the like.
- Do not conduct group interviews. People respond differently when in groups than when in one-on-one interviews.
- Do not try to tape interviews, even with the permission of the interviewee. Take lengthy notes instead.
- The interviewer should make an appointment to conduct an interview, rather than telephoning potential contacts unannounced and catching them unprepared. If possible, send the interview questions to the interviewee ahead of time so that there is time to pre-prepare.
- The interviewer should review the information contained in the questionnaire regarding the past project with the person he/she is interviewing. That is, review who is being interviewed and why (purposes of pre-qualifying for public works), the past project type, completion date, and other pertinent information to ensure that the interviewee is sure of the project he/she is asked to review.
- Before proceeding with the questions, explain that you will ask the interviewee to rate the contractor's performance on a scale of 1 (lowest) to 10 (highest), and that it is important that the interviewee consider the full range in rating the contractor. Explain that the interviewee should base his/her response on the following scale:
  - If the contractor's past performance is **entirely favorable**, then the score should be 9 or 10;
  - If the contractor's past performance is **more favorable than unfavorable**, then the score should be 6, 7 or 8;
  - If the contractor's past performance is **neutral or no record**, then the score should be 5;
  - If the contractor's past performance is **more unfavorable than unfavorable**, then the score should be 3, 4 or 5;
  - If the contractor's past performance is **entirely unfavorable**, then the score should be 1 or 2.
- The ultimate decision to deny pre-qualification is subject to protest; moreover, public and contractor confidence in the integrity of the process demands the agency have a sound basis for its decisions. For that reason, be sure to: (a) ask the interviewee for specific information or details and to explain or substantiate the numerical answer given; and (b) take written notes of the information provided. These notes will assist the agency in responding to any requests for a debriefing.

## THE SCORABLE QUESTIONS

Scorable questions arise in each of the Parts II and III of the questionnaire:

- Part II. Compliance with occupational safety and health laws, workers' compensation and other labor legislation; and,
- Part III. Completion of recent projects and quality of performance.

**Note: Not all questions in the questionnaire are scorable; some questions simply ask for information about the contractor firm's structure, officers, and history. This document includes only those questions that are scorable. The question numbers in this document are the numbers used in the questionnaire. Thus, the questions included here begin with question number 6, and there are a few breaks in the numerical sequence.**

The Part III interview questions (interviews by the public agency of project managers on projects completed recently by the contractor) are directed at collecting the information needed to evaluate depth and breadth of the contractor's experience with recently completed projects that are similar to the current project.

In evaluating a contractor's past performance the agency must recognize that "past performance" is a composite of three things: (1) observations of the historical facts of a company's work experience—what work it did, when and where it did the work, for whom it worked, and what methods were used; (2) qualitative judgments about the breadth, depth, and relevance of that experience based on those observations; and, (3) qualitative judgments about how well the company performed, also based on those observations. Past performance information includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs and schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior; and, more generally, the contractor's business-like concern for the interests of the customer.

The process of assessing the contractor's application for pre-qualification begins with item (1), the facts provided by the contractor on relevant past projects, followed by interviews with the principals of those projects so that the agency can understand the context and meaning of that factual information as it bears on the agency's judgment of the contractor's ability to perform in the future.

### The Scores Needed for Pre-qualification

To pre-qualify on a design-bid-build project, a contractor or subcontractor must have a passing score for each of the scoreable Parts of the Questionnaire referred to above. To pre-qualify on a [*design-build - guaranteed energy savings – other*] project, a contractor must have at least a passing score for each of the scoreable Parts of the Questionnaire; however competition may further be limited to a specified number of the top ranked construction managers as set forth in the request for statements of qualifications.

Part I, General Business Information: this Part does not contain scoreable questions; however, contractor's failure to respond to these questions may be grounds for disqualifying the firm. The answers to the questions provide information that the Agency may use to verify answers to scoreable questions. Moreover, if the information provided in response to these questions indicate the contractor is not a going concern, the Agency may disqualify the contractor.

Part II, History of the Business and Organizational Performance, and Compliance with Occupational Safety and Health Laws, Workers' Compensation and Other Labor Legislation: the highest score available is 109 points. A passing score is a score of 76 of the available points.

Part III, Completion of Recent Projects and Quality of Performance: the agency must evaluate the contractor's past performance by conducting interviews with the owners of three of the reference completed projects, selected at random. Each person being interviewed is asked to rate a certain aspect of the contractor's performance using a scale of 1 to 10. The highest possible score is 120 points.

- A score of 72 or more points on each of the three interviews is sufficient to qualify a contractor on this part of the prequalification process.
- A score of 55 points on any of the three initial interview disqualifies the contractor from bidding on the project.
- If any interview yields a past performance score of 55 or greater but less than 72 points, the agency must conduct an additional interview with another reference. The score of that additional interview must be 72 points or greater for the contractor to have a passing score.

[For Part IV, Special Experience Requirements (if any), (Agency, with OSE's oversight, must develop a minimum passing score of the available points or in the alternative a pass – fail standard for any questions developed to determine whether a contractor meets the special experience requirements)]

## **THE SCORABLE QUESTIONS and SCORING INSTRUCTIONS**

5. If your firm was required to pay a premium of more than one percent for a performance and payment bond on any project(s) on which your firm worked at any time during the last three years, state the percentage that your firm was required to pay.

---

*5 points if the rate is no more than one per cent  
3 points if the rate was no higher than 1.10 per cent.  
0 points for any other answer.*

6. During the last five years, has your firm ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

Yes  No

*No = 5 points                      Yes = 0 points*

7. How many years has your organization been in business as a contractor under your present business name? \_\_\_\_\_ years.

*3 years or more = 2 points  
4 years = 3 points  
5 years = 4 points.  
6 years or more = 5 points*

8. Is your firm currently the debtor in a bankruptcy case?

Yes  No

*“No” = 3 points                      “Yes” = 0 points*

9. Was your firm in bankruptcy at any time during the last five years? (This question refers only to a bankruptcy action that was not described in answer to question 8 above)

Yes  No

*No = 3 points                      Yes = 0 points*

10. Has any contractor’s license held by your firm or its Qualifying Party been suspended within the last five years?

Yes  No

*No = 5 points                      Yes = 0 points*

11. At any time in the last five years, has your firm been assessed or paid delay damages (liquidated or actual) on any public or private construction project?

Yes  No

- *5 points = No more than 1 project with damages of more than \$50,000*
- *3 points = No more than 2 projects with damages of more than \$50,000*
- *0 points = Any other answer*

12. In the last five years, has your firm, parent firm, any subsidiary firm, or any firm with which any of your firm's owners, officers, partners or qualifying parties were associated, been debarred, disqualified, removed or otherwise prevented from bidding on, completing, or contracting to perform any government agency or public works project for any reason? "Associated with" refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to questions 3(b) and 3(c) of Part I of this form.

Yes  No

*No = 5 points*

*Yes = 0 points*

13. In the last five years, has your firm been denied an award of a public works contract based on a finding by any public agency (Federal, state or local) that your firm was not a responsible contractor, i.e., not qualified?

Yes  No

*No = 5 points*

*Yes = 0 points*

14. In the past five years, has any claim against your firm concerning your firm's work on a construction project been filed by a project owner in court or other tribunal or otherwise submitted to another party for dispute resolution, such as but not limited to binding arbitration?

Yes  No

- **5 points** for either "No" or "Yes" with **1 instance** for every **\$50 million** in firm's average gross revenues, or fraction thereof, over previous three year period
- **3 points** for "Yes" with **2 instances** for every **\$50 million** in firm's average gross revenues, or fraction thereof, over previous three year period
- **0 points** for "Yes" if more instances than permitted above

*Example: Three firms, Alpha, Echo, and Kilo each averaged more than \$100 million in gross revenues over the past three years but less than \$150 million. Alpha had three claims; therefore, Alpha receives a score of 5. Echo had six claims; therefore, Echo receives a score of 3. Kilo had seven claims; therefore Kilo receives a score of 0.*

15. In the past five years has your firm made any claim against a project owner concerning work on a project or payment for a contract and filed that claim in court or other tribunal or otherwise submitted the claim to another party for dispute resolution, such as binding arbitration?

Yes  No

- **5 points** for either "No" or "Yes" with **1 instance** for every **\$50 million** in firm's average gross revenues, or fraction thereof, over previous three year period
- **3 points** for "Yes" with **2 instances** for every **\$50 million** in firm's average gross revenues, or fraction thereof, over previous three year period
- **0 points** for "Yes" if more instances than permitted above

*Example: Three firms, Alpha, Echo, and Kilo each averaged more than \$100 million in gross revenues over the past three years but less than \$150 million. Alpha had three claims; therefore, Alpha receives a score of 5. Echo had six claims; therefore, Echo receives a score of 3. Kilo had seven claims; therefore Kilo receives a score of 0.*

16. At any time during the past five years, has any surety company made any payments on your firm's behalf as a result of a default to satisfy any claims made against a performance or payment bond issued on your firm's behalf, in connection with a construction project, either public or private?

Yes  No

*5 points for either "No" or "Yes" with 1 claim*

*3 points for "Yes" with no more than 2 claims*

*Subtract five points for "Yes" if more than 2 claims*



17. In the last five years has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes  No

*5 points for either “No” or “Yes” with 1 instance*

*3 points for “Yes” with 2 instances*

*0 points for “Yes” or if more than 2 instances*

18. Has your firm or any of its owners, officers, partners or qualifying parties ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?

Yes  No

*No = 5 points*

*Yes = subtract 5 points*

19. Has your firm or any of its owners, officers, partners or qualifying parties ever been convicted of a crime involving any federal, state, or local law related to construction?

Yes  No

*No = 5 points*

*Yes = subtract 5 points*

20. Has your firm or any of its owners, officers, partners or qualifying parties ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

Yes  No

*No = 5 points*

*Yes = subtract 5 points*

21. Has any OSHA (Federal or state) cited and assessed penalties against your firm for any “serious,” “willful” or “repeat” violations of its safety or health regulations in the past five years? Do not include citations for which an appeal is pending; however, notify the state if at any time prior to bid opening, the citation is upheld on appeal so that the state may recalculate your score on this form.

Yes  No

- **5 points** for either “No” or “Yes” with **1 instance** for every **\$100 million** in firm’s average gross revenues, or fraction thereof, over previous three year period

- **3 points** for “Yes” with **2 instances** for every **\$100 million** in firm’s average gross revenues, or fraction thereof, over previous three year period

- **0 points** for “Yes” if more instances than permitted above

*Example: Three firms, Alpha, Echo, and Kilo each averaged more than \$100 million in gross revenues over the past three years but less than \$200 million. Alpha had two citations with penalties; therefore, Alpha receives a score of 5. Echo had four citations with penalties; therefore, Echo receives a score of 3. Kilo had five citations with penalties; therefore, Kilo receives a score of 0.*

22. Has any OSHA (Federal or state) cited and assessed penalties against your firm in the past five years for violations of its safety or health regulations that were not “serious,” “willful” or “repeat” violations? Do not include citations for which an appeal is pending; however, notify the state if at any time prior to bid opening, the citation is upheld on appeal so that the state may recalculate your score on this form.

Yes  No

- **5 points** for either “No” or “Yes” with **1 instance** for every **\$50 million** in firm’s average gross revenues, or fraction thereof, over previous three year period

- **3 points** for “Yes” with **2 instances** for every **\$50 million** in firm’s average gross revenues, or fraction thereof, over previous three year period

- **0 points** for “Yes” if more instances than permitted above

*Example: Three firms, Alpha, Echo, and Kilo each averaged more than \$100 million in gross revenues over the past three years but less than \$150 million. Alpha had three citations with*

*penalties; therefore, Alpha receives a score of 5. Echo had six citations with penalties; therefore, Echo receives a score of 3. Kilo had seven citations with penalties; therefore Kilo receives a score of 0.*

23. Has the US Environmental Protection Agency, or any state or regional environmental agency cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor in the past five years? Do not include citations for which an appeal is pending; however, notify the state if at any time prior to bid opening, the citation is upheld on appeal so that the state may recalculate your score on this form.

Yes  No

- **5 points** for either “No” or “Yes” with **1 instance** for every **\$50 million** in firm’s average gross revenues, or fraction thereof, over previous three year period
- **3 points** for “Yes” with **2 instances** for every **\$50 million** in firm’s average gross revenues, or fraction thereof, over previous three year period
- **0 points** for “Yes” if more instances than permitted above

*Example: Three firms, Alpha, Echo, and Kilo each averaged more than \$100 million in gross revenues over the past three years but less than \$150 million. Alpha had three citations with penalties; therefore, Alpha receives a score of 5. Echo had six citations with penalties; therefore, Echo receives a score of 3. Kilo had seven citations with penalties; therefore Kilo receives a score of 0.*

24. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project?

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*3 points for an answer of once each week or more often  
0 points for any other answer*

25. List your firm’s Experience Modification Rate (EMR) for each of the past three premium years:

Current year: \_\_\_\_\_

Previous year: \_\_\_\_\_

Year prior to previous year: \_\_\_\_\_

*5 points for three-year average EMR of .95 or less  
3 points for three-year average of EMR of more than .95, but no more than 1.00  
0 points for any other EMR*

26. Within the last five years has there ever been a period when your firm had employees but was without workers’ compensation insurance or state-approved self-insurance? Provide a statement by your current workers’ compensation insurance carrier that verifies periods of workers’ compensation insurance coverage for the last five years. If your firm has been in the construction business for less than five years, provide a statement by your workers’ compensation insurance carrier verifying continuous workers’ compensation insurance coverage for the period that your firm has been in the construction business.

Yes  No

*5 points for either “No” or “Yes” with 1 instance  
0 points for any other answer*

27. Has there been more than one occasion during the last five years in which your firm was required to pay either back wages or penalties for your own firm’s failure to comply with federal or state wage and hour laws including the Federal Davis-Bacon Act?

Yes  No

- **5 points** for either “No” or “Yes” with **2 instance** for every \$50 million in firm’s average gross revenues, or fraction thereof, over previous three year period
- **3 points** for “Yes” with **3 instances** for every \$50 million in firm’s average gross revenues, or fraction thereof, over previous three year period
- **0 points** for “Yes” if more instances than permitted above

*Example: Three firms, Alpha, Echo, and Kilo each averaged more than \$100 million in gross revenues over the past three years but less than \$150 million. Alpha had three incidents; therefore, Alpha receives a score of 5. Echo had six incidents; therefore, Echo receives a score of 3. Kilo had seven incidents; therefore Kilo receives a score of 0.*

### **Scoring of Questions about Past Performance**

1. Are there any outstanding stop notices, liens, or claims by the contractor that are currently unresolved on contracts for which notices of completion were recorded more than 120 days ago? (1 point for each is deducted from overall score; maximum amount to be deducted is 5 points)
2. On a scale of 1-10, with 10 being the best, did the contractor provide adequate personnel? (Max. 10 points)
3. On a scale of 1-10, with 10 being the best, did the contractor provide adequate supervision? (Max. 10 points)
4. On a scale of 1-10, with 10 being the best, was there adequate equipment provided on the job? (Max. 10 points)
5. On a scale of 1-10, with 10 being the best, was the contractor timely in providing reports and other paperwork, including change order paperwork and scheduling updates? (Max. 10 points)
6. On a scale of 1-10, with 10 being the best, did the contractor adhere to the project schedule that your [agency] [business] approved? (Max. 10 points)
7. Was the project completed on time? (10 points if the answer is “Yes”). Or, if the answer is “no,” on a scale of 1-10, with 10 being the best, to what extent was the contractor responsible for the delay in completion? (Max. 10 points)
8. On a scale of 1-10, with 10 being the best, rate the contractor on the timely submission of reasonable cost and time estimates to perform change order work. (Max. 10 points)
9. On a scale of 1-10, with 10 being the best, rate the contractor on how well the contractor performed the work after a change order was issued, and how well the contractor integrated the change order work into the existing work. (Max. 10 points).
10. On a scale of 1-10, with 10 being the best, rate how has the contractor been performing in the area of turning in Operation & Maintenance manuals, completing as-

built drawings, providing required training and taking care of warranty items? (Max. 10 points)

11. On a scale of 1-10, with 10 being the best, rate the contractor on whether there were an unusually high number of claims, given the nature of the project, or unusual difficulty in resolving them. (Max. 10 points)

12. On a scale of 1-10, with 10 being the highest, rate the contractor with respect to timely payments by the contractor to either subcontractors or suppliers. (If the person being interviewed knows of no such difficulties, the score on this question should be "10.")

13. On a scale of 1-10, with 10 being the best, how would you rate the quality of the work overall? Max. 10 points)

## The Scoring Matrix

Table 1	
Question	Score
15	
16	
17	
<b>Total Pts</b>	
<b>Poss. Pts.</b>	<b>11</b>
<b>Score %</b>	

Table 2	
Question	Score
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
34	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
<b>Total Pts</b>	
<b>Poss. Pts.</b>	<b>108</b>
<b>Score %</b>	

Table 3				
Question	Project 1	Project 2	Project 3	Project 4
47	< >	< >	< >	< >
48				
49				
50				
51				
52				
53				
54				
55				
56				
57				
58				
59				
<b>Total Pts.</b>				
<b>Poss. Pts.</b>	<b>120</b>			
<b>Score %</b>				

## **VI. SOURCES FOR VERIFICATION OF INFORMATION GIVEN BY CONTRACTORS**

**NOTE: The information provided by contractors seeking prequalification is provided by contractors under oath, with the understanding that the intentional providing of false information is, in itself, grounds for disqualification. Agencies will and should generally accept information at face value. The following information is provided for use in those instances in which an agency reviewing the answers given in a questionnaire has reason to believe that one or more answers should be verified by reference to publicly available information.**

### Information about a contractor's license(s)

(Questionnaire Part I, question 6, and Part II, questions 6 and 9-13)

Names and addresses of licensed contractors, information about the type of license(s) issued and the dates when licenses were issued (and certain other information), are available from the Contractors' Licensing Board of the SC Department of Labor, Licensing and Regulation.

### Information about workers' compensation insurance

(Part I, question 3 and Part II, questions 32-33)

Every workers' compensation insurance carrier issues to each of its insured businesses a Certificate of Insurance. The contractor should be willing to provide a copy upon request.

Each contractor's Experience Modification Rate for the year should be stated in a letter to the contractor from the contractor's workers' compensation insurance carrier.

Some companies are legally self-insured for workers' compensation, with the consent and authorization of the Worker's Compensation Commission. The names of companies that are legally self-insured are available from the Commission.

### Information about whether surety companies are "admitted" to do business in South Carolina

(Part I, question 5)

The South Carolina Department of Insurance will verify whether a surety company is "admitted" to issue surety bonds within the State.

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## Information on disqualification from bidding on public contracts (Part I, question 8 and Part II, question 15)

Information on the identities of contractors that have been disqualified from bidding on State construction contracts is available from the Office of State Engineer. The Office also maintains records of Contractor Performance Reports filed by agencies.

## Information available from the Secretary of State about corporations (Part II, questions 1a-1d, 2-4)

The South Carolina Secretary of State has certain current and historical information about all corporations that operate in South Carolina: dates of incorporation, articles of incorporation, the name of the original incorporators, the names of the corporate officers (who are not necessarily the corporate stockholders) and an agent for service of process for the corporation. This information is available from the Secretary of State upon written request. The Secretary of State does not ordinarily have a listing of the names of initial stockholders or current stockholders, and that information is generally not available in any public record.

## Information available from the Contractors' Licensing Board about partnerships and sole proprietorships (Part I, questions 1a-1d,2-4)

Every business that operates under a general or mechanical contractor's license in South Carolina is required to identify the owners or partners of the firm as part of the license application process. The information is available to the public from the Contractors' Licensing Board upon request. A written request may be necessary.

## Information about bankruptcy proceedings (Part II, questions 7 and 8)

Bankruptcy petitions, which include the names of the person or business that is seeking protection from the Bankruptcy Court, are available for public inspection at the office of the Clerk of each Bankruptcy Court (which are federal courts). In South Carolina, the Bankruptcy Court is located at 1100 Laurel Street, Columbia, SC 29201-2423 (803-765-5436) <http://www.scb.uscourts.gov/>. Most documents filed in court in bankruptcy proceedings are available for public inspection, at the Bankruptcy Court clerk's office. Some information on bankruptcy filings may also be available from commercial enterprises that collect and sell information from public records. In addition some information about bankruptcy cases filed August 1990 and later is available on-line through the "PACER" (Public Access to Court Electronic Records) system. To obtain information from PACER, you must

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register with the system, and pay a fee for the materials obtained. Call 1-800-676-6856 or you may register online at <http://pacer.psc.uscourts.gov/>.

## Information about civil suits and arbitration cases

(Part II, questions 14, 17 and 18)

Each court keeps records of every civil suit filed in that court, and of the judgments that are issued after trials. However, the exact terms of pre-trial settlements are generally not recorded in court files. Documents related to disputes submitted to arbitration are generally not available for public inspection. Public agencies, however, are required to disclose the terms of such settlements, when documents are requested under the South Carolina Freedom of Information Act.

## Information about criminal convictions

(Part I, question 9, and Part II, questions 21, 22, and 23)

Criminal convictions are a matter of public record. Each courthouse (in both the federal and state court systems) has an index of its own criminal records. In addition, a few data collection businesses have collected criminal conviction information from public records throughout the state, and the collected information about particular individuals or businesses is available for sale from these private businesses.

## Information about Federal court civil and criminal cases

(Part I, question 9)

Information about federal criminal cases (filed August 1991 and later) and civil cases (filed August 1990 and later) is available on-line through the "PACER" (Public Access to Court Electronic Records) system. To obtain information from PACER, you must register with the system, and pay a fee for the materials obtained. Call 1-800-676-6856) or you may register online at <http://pacer.psc.uscourts.gov/> .

## Information about citations issued for violation of industrial safety and health laws

(Part II, questions 28 and 29)

Information about citations issued by both the federal Occupational Safety and Health Administration and the South Carolina Office OSHA Compliance (SC OSHA) are available on a web-site maintained by federal OSHA, <http://www.osha.gov>. At that web site, click on "Library." On the Library page, click on "Statistics and Inspection Data." Next, click on "Establishment Search." When the next screen appears, enter the name of the contractor about whom you seek information in the "Establishment" window and select appropriate values the remaining fields, then click the "Submit" button.



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## Information about wage and hour law violations (Part II, question 34)

Information about recent wage and hour law violations is available from the SC Department of Labor, Licensing and Regulation.

## Violations of air or water quality regulations (Part II, question 30)

Information about citations issued by the South Carolina Department of Health and Environmental Control is available from that agency under the Freedom of Information Act.

**Guidance & Best Practices**  
for  
Permissible Communications in a Competitive Sealed Proposal  
After Opening but Prior to Award

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State Procurement Office / Information Technology Management Office / State Engineer's Office  
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Version Date: November 26, 2007

**Restrictions: As expressly provided by law in R.19-445.2095(I)(4), the discussions allowed in paragraph (b) may be conducted only by procurement officers authorized in writing by the appropriate chief procurement officer.**

*Notes: (1) Regulation 19-445.2095(G) provides that "[t]he appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies using the competitive sealed proposal method of acquisition." This guidance, not including the commentary, is issued pursuant to this Regulation. (2) Paragraph (B) is taken verbatim from R. 19-445.2095(I), except for the commentary. Paragraph (E)(5) is adapted from R. 19-445.2010(C). (3) For any given procurement, the term "procurement officer" is defined, for purposes of this document, as the person, or his successor, identified as such in the solicitation.*

(A) Communications After Opening, Prior to Award - Not Including Discussions [11-35-1530(6)] or Negotiations [11-35-1530(8)]. The Code and Regulations authorize the following communications after opening, prior to award. Unless the law reflects otherwise, such communications may take place at any time between opening and posting of the award notice, consistent with the underlying enabling authority.

(1) Opening. Very limited communications, if any, can take place during opening. [11-35-1530(3); R.19-445.2010(D); R.19-445.2095(C)(1)]

(2) Acceptance Period Extensions. The procurement officer may exchange information in writing with an offeror regarding a request that an offeror extend its offer acceptance period. [R.19-445.2097(C)]

(3) Minor Informalities. The procurement officer may exchange information in writing with an offeror to allow the offeror to cure, or the state to waive, any deficiency resulting from a minor informality or irregularity. [11-35-1520(8),(13); R.19-445.2095(E)]

(4) Corrections & Withdrawals. The procurement officer may exchange information in writing with an offeror regarding an offeror's request to correct or withdraw its offer. [R.19-445.2085(A)&(B); R.19-445.2095(H)(4)]

[Commentary: See commentary to item (B)(2)(d).]

(5) Questions & Answers. Most solicitations provide an opportunity for offerors to submit written questions and for the state to respond in a written amendment to the solicitation.

[Commentary: In a solicitation amendment that responds to vendor questions, the amendment should not (i) reveal the identity of any offerors,<sup>1</sup> or (ii) provide information not necessary for bidders to submit offers. The solicitation amendment forms part of the contract documents. Draft amendments accordingly.]

(6) Clarifications. Clarifications are an exchange of information conducted to facilitate the State's understanding of a proposal - as originally submitted - by resolving substantial ambiguities in the proposal. [11-35-1520(8);<sup>2</sup> R.19-445.2080, -445.2095(E)]

(a) Clarifications may be conducted *only* to clarify an ambiguity in a proposal.

[Commentary: (1) Exchange sufficient information with the vendor to resolve the ambiguity. (2) The procurement officer is charged with limiting such exchanges to only the information necessary to determine how to read language *already existing* in the proposal. (3) A proposal is ambiguous if open to more than one reasonable interpretation or obscure in meaning, through indefiniteness of expression.<sup>3</sup> Silence is not an ambiguity. (4) Clarifications *cannot* involve an opportunity for proposal revisions. Accordingly, clarifications must be limited to determining which reasonable interpretation was intended and should *not* include new information or revisions to existing information. Identifying the correct interpretation of language requires only a limited amount of information.]

(b) Clarifications may be conducted only with offerors who have submitted proposals that are obviously responsive to the solicitation's material requirements. [R.19-445.2080] A proposal is not obviously responsive if the determination of responsiveness is dependent on the vendor's resolution of an ambiguity in its proposal.<sup>4</sup>

[Commentary: (1) Allowing the clarification of an ambiguity under Section 11-35-1520 to determine whether an offer is responsive is fundamentally inconsistent with the competitive bidding process, around which Section 11-35-1520 is written.<sup>5</sup> (2) In determining responsiveness, only the face of the proposal may be considered.<sup>6</sup>]

(c) Clarifications must be conducted with *all* obviously responsive offerors, but only substantial ambiguities need be clarified.

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<sup>1</sup> R.19-445.2010(D).

<sup>2</sup> Because Section 11-35-1520 governs competitive sealed bidding, the guidance has been drafted to apply equally to IFBs. As a practical matter, the authority to seek clarifications pursuant to Section 11-35-1520 has a very narrow application in the context of competitive sealed bidding.

<sup>3</sup> Penton v. J.F. Cleckley & Co., 486 S.E.2d 742 (S.C. 1997) ("An ambiguous contract is one capable of being understood in more ways than just one or one unclear in meaning because it expresses its purpose in an indefinite manner."), Southern Atlantic Financial Services, Inc. v. Middleton, 562 S.E.2d 482, 484 (S.C. Ct. App. 2002) ("Mere lack of clarity on casual reading is not the standard for determining whether a contract is afflicted with ambiguity. A contract is ambiguous when its terms are reasonably susceptible of more than one interpretation.") (citations omitted).

<sup>4</sup> See, generally, Protest of Cannon Associates, Inc., Case No. 2000-13 ("The Panel has decided in several cases that contacting a bidder to seek clarification of substantive portions of his bid injects the potential for abuse into the procurement process. The Panel has stated that once bids are opened and it becomes clear that a certain bidder is the winner but for an ambiguous provision in his bid, clarification would allow that bidder to manipulate his bid to insure that he receives award of the contract.").

<sup>5</sup> Protest of Abbott Laboratories, Case No. 1997-4 ("Because Ross wrote its request [for mutual termination-for-convenience rights] expressly in the bid, the MMO was compelled to interpret its meaning. The Panel has ruled repeatedly that State procurement officials cannot contact a bidder for clarification."), Protest of Two State Construction Co., Case No. 1996-2 ("The procuring agency cannot seek bid clarification on which it intends to base its decision of responsiveness. . . . The procuring agency may not seek clarification before making a determination of responsiveness, but must find a bid nonresponsive if it feels clarification of the bid is needed."), Protest of United Testing Systems, Inc., Case No. 1991-20 ("Once bids are opened and it becomes clear that a certain bidder is the winner but for an ambiguous provision in his bid, clarification would allow that bidder to manipulate his bid to insure that he receives the award of the contract."), Protest of Value Options, Case No. 2001-7 (concerning an RFP) ("[T]his clarification was clearly in violation of the Code because Magellan was not yet deemed an apparent responsive offeror as is required for Discussion with Offerors under 11-35-1530 of the Code."). See, generally, John Cibinic, Jr. and Ralph C. Nash, Jr., Formation of Government Contracts 569 (George Washington University 3d ed. 1998) ("Bids that are indefinite, uncertain, or ambiguous are normally rejected as nonresponsive.").

<sup>6</sup> Protest of Two State Construction Co., Case No. 1996-2 ("The Panel agrees with Two State that a bid must be found responsive on its face . . ."). See also Blount, Inc. v. United States, 22 Cl.Ct. 221, 226 (Cl. Ct. 1979) ("Matters of bid responsiveness must be discerned solely by reference to the materials submitted with the bid and facts available to the government at the time of bid opening.") and Southern Foods Group, L.P. v. State, Dept. of Educ., 974 P.2d 1033, 1047 (Haw. 1999) ("Responsiveness is determined by reference to when they are opened and not by reference to subsequent changes in a bid.") (quoting R. Nash & J. Cibinic, Federal Procurement law, 260 (3d ed.1977)).

[Commentary: Section 11-35-1520(8) mandates that *all* offers *needing* clarification must be accorded that opportunity; however, no clarification is needed if an offer contains no substantial ambiguities. The statute affords the procurement officer considerable judgment regarding whether or not an ambiguity needs clarification.]

(d) Clarifications must be conducted only by the procurement officer. Most communications should be in writing.

(e) Clarifications must be documented in writing by the procurement officer and must be included with the proposal. *Clarifications may not result in proposal revisions, only a proper interpretation of the proposal as submitted.*

[Commentary: The statute does not require the procurement officer to include with the proposal all communications exchanged for the purpose of clarifying an ambiguity. Rather, the statute requires that the clarification "must be documented in writing by the procurement officer and included with the [proposal]." This distinction recognizes that clarifications under Section 11-35-1520 do *not* involve proposal revisions. Obviously, the procurement officer cannot legitimately include text in a proposal not agreed to by the offeror. Likewise, the procurement officer cannot - as part of clarifications under 11-35-1520 - include text in a proposal that is unnecessary to resolve the ambiguity. Because the communications exchanged during clarifications can result in receiving information unnecessary to resolving the ambiguity, the procurement officer should document and include in the proposal only that text agreed to by the offeror that is necessary to resolve the ambiguity. Because clarifications do not involve an opportunity for proposal revisions, clarifications *must* be limited to determining which reasonable interpretation of existing proposal text was intended and *cannot* include new information or revisions to existing information.]

(7) Responsibility. The procurement officer may exchange information in writing with an offeror regarding its responsibility.

(a) Such information may be requested at any time prior to award. [11-35-1580; R. 19-445.2125(B)]

[Commentary: While responsibility can be determined earlier in the process, responsibility is often determined only for the apparent successful offeror, after evaluation and shortly before award. If special standards of responsibility have been established, the procurement officer may find it more efficient to identify which offerors meet the special standards early in the process. Exchanges to acquire this information are allowed after opening and prior to award. Most RFPs include one or more evaluation criteria that contemplate an offeror's capabilities. Adding such additional information to the proposal would provide that offeror an unfair opportunity to enhance its proposal.]

(b) Information gathered after opening to determine responsibility - either generally or regarding special standards of responsibility - cannot be added to the documents to be evaluated and ranked, i.e., the proposal.

[Commentary: Most RFPs include one or more evaluation criteria that contemplate an offeror's capabilities. Adding such additional information to the proposal would provide that offeror an unfair opportunity to enhance its proposal.]

(8) Oral Presentations / Demonstrations. Oral presentations and demonstrations may not be conducted except as part of the evaluation process.

(a) Oral presentations are used only for understanding an offeror's proposal in order to facilitate evaluation. Demonstrations involve an evaluation of an offeror's product.

Presentations and demonstrations must be consistent with and limited to the equipment, supplies, services, information technology, pricing, terms, and conditions provided in the offeror's proposal.

(b) Under the control of the procurement officer, people directly involved in evaluating proposals may attend, participate, and ask questions of offerors during an oral presentation or demonstration. Such communications may not (i) communicate demands or weaknesses or deficiencies to an offeror, (ii) include or take place during negotiations, or (iii) result in proposal revisions.

(c) People participating or attending an oral presentation or demonstration must agree to the same limitations applicable to those with access to proposals - R. 19-334.2010(d) & (e).

(9) Cost / Pricing Data. If allowed by law, the procurement officer may exchange information with an offeror regarding its cost or pricing data. [11-35-1830; R.19-445.2120] Generally, the procurement officer will request cost or pricing data only in conjunction with negotiations or prior to making an award without negotiations to the highest ranked offeror.

#### (B) Discussions with Offerors<sup>7</sup>

**Special Restrictions: Do not conduct discussions under this paragraph (B):**  
**(1) unless you have been authorized under R.19-445.2095(I)(4),**  
**(2) for procurements with an expected value below \$500,000,**  
**(3) for solicitations issued prior to September 3, 2007.**

[Commentary: Paragraph (B) is taken verbatim from R. 19-445.2095(I), except for the commentary.]

(1) Classifying Proposals. For the purpose of conducting discussions under Section 11-35-1530(6) and item (2) below, proposals shall be initially classified in writing as:  
(a) acceptable (i.e., reasonably susceptible of being selected for award);  
(b) potentially acceptable (i.e., reasonably susceptible of being made acceptable through discussions); or  
(c) unacceptable.

[Commentary: Please see related training materials for illustrations.]

(2) Conduct of Discussions. If discussions are conducted, the procurement officer shall exchange information with all offerors who submit proposals classified as acceptable or potentially acceptable. The content and extent of each exchange is a matter of the

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<sup>7</sup> The communications addressed in R.19-445.2095(I) are authorized by the following statute:

Discussion with Offerors. As provided in the request for proposals, and under regulations, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award *for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.* All offerors whose proposals, in the procurement officer's sole judgment, need clarification must be accorded that opportunity.

S.C. Code Ann. § 11-35-1530(6) (emphasis added).

procurement officer's judgment, based on the particular facts of each acquisition. In conducting discussions, the procurement officer shall:

(a) Control all exchanges;

[Please see attached Form Letter for Discussions with Offerors.]

(b) Advise in writing every offeror of all deficiencies in its proposal, if any, that will result in rejection as non-responsive;

[Commentary: R.19-445.2095(J) identifies the basic reasons for rejecting an individual proposal.<sup>8</sup>]

(c) Attempt in writing to resolve uncertainties concerning the cost or price, technical proposal, and other terms and conditions of the proposal, if any;

[Commentary: (1) Unlike clarifications conducted under Section 11-35-1520, discussions conducted under Section 11-35-1530 expressly include proposal revisions. While discussions are not designed to generate unrestrained enhancements to or further development of proposals, they are conducted for the purpose of clarification and should provide all offerors an opportunity to clarify significant ambiguities in their proposals. (2) Language can be ambiguous either because it can be fairly understood in more than one way or because it expresses its purpose in an indefinite manner.<sup>9</sup> (3) Because discussions do involve an opportunity for proposal revisions, discussions may include new information or revisions to existing information. However, discussions are not designed to allow unrestrained enhancements to or further development of proposals. Accordingly, the extent that new information or revisions to existing information is allowed should be limited to addressing the ambiguity. The procurement officer can exercise some control by carefully phrasing any questions sent to an offeror.]

(d) Resolve in writing suspected mistakes, if any, by calling them to the offeror's attention.

[Commentary: (1) Discussions are conducted for the purpose of clarification, not to allow enhancements to or further development of a proposal. Accordingly, mistakes only include unintended errors, defects, or omissions that the procurement officer has reason to suspect based solely on examining the proposal document.<sup>10</sup> Examples include apparent clerical errors, suspected errors in pricing, inadvertent omissions (e.g., perhaps a missing numbered page). The opportunity to identify mistakes must not be used to identify areas an agency may want an offeror to improve or further develop. (2) Discussions to correct mistakes

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<sup>8</sup> Formerly, rejection of individual proposals was governed by R. 19-445.2070. Under the revised (2007) regulations, rejection is governed by R. 19-445.2095(J), which reads as follows:

J. Rejection of Individual Proposals.

(1) Proposals need not be unconditionally accepted without alteration or correction, and to the extent otherwise allowed by law, the State's stated requirements may be clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

- (a) the business that submitted the proposal is nonresponsible as determined under Section 11-35-1810;
- (b) the proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect; or
- (c) the proposed price is clearly unreasonable.

(2) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

S.C. Code Ann. Regs. § 19-445.2095(J).

<sup>9</sup> *Penton v. J.F. Cleckley & Co.*, 486 S.E.2d 742 (S.C. 1997) ("An ambiguous contract is one capable of being understood in more ways than just one or one unclear in meaning because it expresses its purpose in an indefinite manner.").

<sup>10</sup> Mistakes evident on the face of an offer can be corrected under R.19-445.2085; however, the scope of corrections allowed under that regulation is much narrower than what is correctable under R. 19-445.2095. E.g., *Protest of Millers of Columbia, Inc.*, Case No. 1989-3 ("Although it was evident on the face of the bid that a mistake had been made, that mistake could not be corrected from the information available.") and *Protest by Ohmeda Company*, Case No. 1987-5.

should not be used to alter elements of a proposal that were intended by the offeror but later found to be disadvantageous because, in that situation, there was no mistake. (3) Communications regarding mistakes should identify the suspected mistake and the reason for the suspicion,<sup>11</sup> but should not suggest correct answers, solutions, or improvements.]

(e) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal, but only to the extent such revisions are necessary to resolve any matter raised by the procurement officer during discussions under items (2)(b) through (2)(d) above.

[Commentary: (1) No "discussions" are conducted with any offeror whose proposal is classified as unacceptable. (2) Under Section 11-35-1530(6), discussions are conducted only "for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements." Discussions are not conducted to coach offerors regarding how to enhance or further develop their proposals. Likewise, discussions do not involve either negotiations or revisions to the solicitation. (3) Except as required in Paragraph (2)(b) - (e), discussions need not be in writing. Discussions may include communications to assure an offeror's full understanding of the solicitation requirements,<sup>12</sup> but all offerors must be accorded fair and equal treatment. (4) When communicating to an offeror the information required by items (2)(b) through (2)(d) above, do not share one offeror's communications with another offeror. (5) After opening, you must not allow proposal revisions except in conjunction with, and in accordance with, discussions conducted pursuant to this paragraph. Paragraph (2)(e) strictly limits the type of proposal revisions allowed. Revisions beyond those allowed may result in rejection of a proposal. If an offeror submits revisions beyond those allowed, the procurement officer has two choices. First, as noted in the form letter, the procurement officer may reject the revisions and consider only the initial proposal (which may be non-responsive). The regulation requires only "a reasonable opportunity to submit any . . . revisions." Second, the procurement officer may conduct further discussions, i.e., advise the offeror in writing of the deficiency and provide an opportunity to cure with proposal revisions. ]

(3) Limitations. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Ordinarily, discussions are conducted prior to final ranking. Discussions may not be conducted unless the solicitation alerts offerors to the possibility of such an exchange, including the possibility of limited proposal revisions for those proposals reasonably susceptible of being selected for award.

[Commentary: (1) With one exception, discussions are conducted prior to final ranking because (i) discussions are used to facilitate responsiveness, and section 11-35-1530(7) allows only responsive offers to be ranked, and (ii) discussions lead to proposal revisions, and evaluations must consider the entire proposal. Discussions can occur after best and final offers have been solicited and received. (2) Multiple rounds of discussions may be conducted, subject to all other applicable rules, especially the regarding fair and equal treatment of all offerors.]

(4) Communications authorized by Section 11-35-1530(6) and items (1) through (3) above may be conducted only by procurement officers authorized by the appropriate chief procurement officer.

[Commentary: Selected procurement officers will be authorized individually, in writing, by the appropriate CPO.]

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<sup>11</sup> The suspected error could relate to an offeror's pricing. You may suspect a defective price based on how the offeror's price compares with other prices. When communicating to the offeror the reason for the suspicion, do not indicate how the offeror's price compares with any other offeror's pricing.

<sup>12</sup> S.C. Code Ann. § 11-35-1530(6) (Authorizing discussions "for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements."); R. 19-445.2095(J)(1) ("[T]o the extent otherwise allowed by law, the State's stated requirements may be clarified after proposals are submitted."). Discussions conducted to clarify the state's requirements may not involve amending the solicitation. As with pre-opening conferences, the state's requirements may not be changed by such discussions. See R. 19-445.2042 ("Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment.").

(C) Negotiations. Negotiation is an exchange between the State and an offeror undertaken with the intent of allowing the offeror to revise its proposal. Negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. Negotiated proposal revisions may affect the scope of the proposed contract, so long as the changes are within the general scope of the request for proposals.

(1) Negotiations are optional.<sup>13</sup>

(2) Negotiations must be controlled by the procurement officer.

[Commentary: Manage vendor expectations by conveying the following rules to the vendor in writing: (i) the potential for submitting cost and pricing data, (ii) the potential for a BAFO process, (iii) the absence of any obligation to provide formal notice that negotiations have been terminated with an individual offeror, (iv) the restrictions imposed by the solicitation on communications by the offeror.]

(3) The primary objective of negotiations is to maximize the State's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. [11-35-310(28); 11-35-1530(9)]

(4) Negotiations are tailored to each offeror's proposal.

(5) Negotiations must be meaningful. The procurement officer is encouraged to discuss those aspects of an offeror's proposal that could, in the opinion of the procurement officer, be altered or explained to enhance materially the proposal's potential for award. However, the procurement officer is not required to discuss every area where the proposal could be improved. The scope and extent of negotiations are a matter of procurement officer judgment. Negotiations must be conducted in good faith.

[Commentary: (1) Negotiations present an opportunity for offerors to expand, strengthen, enlarge, enhance, or further develop their proposals, so long as the changes are (i) within the general scope of the request for proposals and (ii) do not involve a significant revision to the solicitation's mandatory requirements. The Procurement Officer can facilitate such improvements by identifying concerns with an offeror's proposal, including significant deficiencies, weaknesses, excesses, ambiguities, uncertainties, omissions, errors or mistakes. Concerns may involve any aspect of an offeror's proposal, including price, past performance, references, technical approach, and any matter evaluated. As an example, the procurement officer could identify excesses or "gold plating" that could be eliminated along with a price concession. (2) Issues raised during the evaluation process may provide valuable information for negotiations. (3) As noted in the limits on exchanges - item (e) below, a procurement officer should avoid engaging in unfair negotiation practices, such as providing one firm's innovative technical solution to another offeror or aggressively identifying concerns in negotiations with one offeror while failing to undertake any such effort in negotiations with another offeror.]

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<sup>13</sup> Award may be made to the highest ranking offeror without conducting negotiations. Section 11-35-1530(9) provides that "the procurement officer, in his sole discretion and not subject to review under Article 17, may proceed in any of the manners" allowed in subparagraphs (a) through (c). As used in that sentence, the term "sole discretion" applies to the decision whether or not to negotiate at all, i.e., whether to make an award to the highest ranked offeror without negotiations or to conduct negotiations. Section 11-35-1530(9)(a) provides that "negotiations may be conducted, in the sole discretion of the procurement officer, with the second, and then the third, and so on, ranked offerors to the level of ranking determined by the procurement officer in his sole discretion." As used in this sentence, the term "sole discretion" applies to the decision whether - in the face of an unsuccessful negotiation - to move down to the next highest ranked vendor, to re-negotiate with a higher ranked vendor, or to request best and final offers. The conclusion that negotiations were unsuccessful is *not* a matter of the procurement officer's sole discretion, but it is final unless arbitrary or capricious.



(6) Negotiations should not involve a significant change to the solicitation. If the procurement officer makes changes to the solicitation's mandatory requirements or general scope, the procurement officer must request best and final offers pursuant to paragraph (d) below.

(7) Once negotiations with a vendor begin, the procurement officer must attempt, in good faith, to successfully negotiate a "satisfactory contract" - without regard to any other proposals received. (Negotiations are not an opportunity to re-evaluate one offeror against another. That step took place during the evaluation and ranking.) If the procurement officer concludes that a satisfactory contract cannot be negotiated, the procurement officer may then proceed as allowed by section 11-35-1530(8). In evaluating whether or not a contract is satisfactory, the stated evaluation factors must form the ultimate basis of your decision.

(8) Under 11-35-1530(9), the contract file must contain the basis on which the award is made. Under 11-35-310(28), the award of the contract must be made on the basis of the evaluation factors stated in the solicitation. If award is made to the highest ranked offeror without negotiations, the basis for award should appear in the written determination explaining the evaluation and ranking. If award is made after negotiations, the basis for award must also explain (i) the results of any negotiations, and (ii) the reasons any negotiations were unsuccessful, i.e., why a satisfactory contract could not be negotiated with an offeror.

(9) If an offeror's initial price is considered unacceptable, make a determination of price unreasonableness under R. 19-445.2095(J)(1)(c) prior to ranking. Negotiations are not a mechanism to price shop. If a price reduction cannot be negotiated, the BAFO process may be appropriate.

#### (D) Best and final offers (BAFO)

(1) Best and final offers may be requested only after evaluation and final ranking pursuant to Section 11-35-1530(7). Best and final offers may be sought before, after, or without negotiations. If negotiations are started, those negotiations must be concluded before the procurement officer may seek best and final offers.

(2) In conducting a BAFO, the procurement officer should (i) make changes to the solicitation's required scope of work, as long as the changes are within the general scope of the request for proposals, and (ii) provide all responsive offerors an opportunity to submit their best and final offers.

[Commentary: BAFOs are most commonly used to achieve price reductions that could not be achieved through negotiations, typically because the price reduction requires a reduction in the scope of work required by the solicitation that cannot be achieved properly in negotiations.]

(3) A request for best and final offers must be issued as an amendment to the request for proposals. The request shall include:

- (a) Any changes to the request for proposals allowed by Section 11-35-1530(8)(c);
- (b) Notice that negotiations are concluded, if applicable;

- (c) Notice that this is the opportunity to submit a best and final offer;
- (d) A common cutoff date and time that allows a reasonable opportunity for submission of written best and final offers; and
- (e) Notice that if any best and final offer is submitted, it must be received by the date and time specified and is subject to the rules governing submission of proposals.

[Commentary: (1) Amendments for purposes of a BAFO are not posted to the internet. Rather, they are sent only to actual offerors. (2) Best and final offers should be submitted as proposal revisions. Include appropriate instructions in your request for BAFOs.]

(4) Following receipt of best and final offers, all responsive offerors must be evaluated and ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals. Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State. [11-35-310(28); 11-35-1530(9)] After conducting a BAFO, the procurement officer may not conduct successive rounds of best and final offers.

(5) Do not disclose confidential information derived from proposals submitted by or negotiations conducted with competing offerors. [11-35-1530(8)]

(6) If, in the judgment of the procurement officer, based on market research or otherwise, a solicitation amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, such that additional sources likely would have submitted offers had the substance of the amendment been known to them, the procurement officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

(E) Limits on exchanges. Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall not engage in conduct that—

[[Commentary: (1) Limitations outlined in Paragraph (E) apply to all types of communications addressed in this guidance. (2) Prior to posting an award, or intent to award, regulation 19-445.2010(D) prohibits anyone from disclosing either the number of offerors or their identity unless required to do so by law. (3) Regulation 19-445.2010(c) allows the responsible procurement officer to authorize certain disclosures in writing.]]

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals an offeror's price without that offeror's permission. However, the procurement officer may inform an offeror that its price is considered by the State to be too high, or too low;

(4) Reveals the names of individuals providing reference information about an offeror's past performance; or

(5) Knowingly furnishes source selection information to anyone other than the responsible procurement officer. "Source selection information" means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (a) proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (b) source selection plans, (c) technical evaluation plans, (d) technical evaluations of proposals, (e) cost or price evaluations of proposals, (f) information regarding which proposals are determined to be reasonably susceptible of being selected for award, (g) rankings of responses, proposals, or competitors, (h) reports, evaluations of source selection panels or evaluation panels, (i) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

-end-

# WEB SITE VERIFICATION FOR SURETY COMPANIES

## A. NOTES:

1. On the SC Department of Insurance website, be extremely careful when checking the name of the surety company to ensure the correct company is checked.
2. On the A.M. Best website, enter the surety company's name exactly as shown on the bond.

## B. INSTRUCTIONS FOR VERIFICATION

1. Access the South Carolina Department of Insurance website at [www.doi.sc.gov](http://www.doi.sc.gov).
2. At the Department of Insurance website home page, under “Companies”, click on “Company Information.” Next click “General Information.” Finally click “List of Insurance Companies and Health Maintenance Organizations Authorized to Transact Business within the State of SC.”
3. A list of insurance companies authorized to transact business in South Carolina will appear. Verify that the surety company's name is on the list.
4. Go back to the SC Department of Insurance page. Click “Government and Industry Resources” on the light grey menu bar on the left side of the web page.
5. Click “A.M. Best Company” or go directly to the A.M. Best home page at [www.ambest.com](http://www.ambest.com). Note: You may be required to register at your first search.
6. Enter the company name in the box labeled “Ratings & Analysis” and then click on “Go.”
7. Select the exact company name as it appears on the Bond Form to view the Best Ratings.
8. To be acceptable, a Bid Bond **shall**:
  - a. Be written on the latest available edition of the **AIA A310** or the equivalent (An equivalent form will have verbiage that states that it is ‘in the form of the **AIA A310**’ on it);
  - b. Be issued by a surety company licensed to do business in South Carolina;
  - c. Be issued by a surety company having, at a minimum, a “Best Rating” of “A” (Note: In the case of a construction contract under \$100,000, the agency may, upon written justification and with the approval of the OSE, allow the use of a “B+” rated bond.);
  - d. Have a minimum “Best Financial Strength” of in no case less than five (5) times that portion of the contract price that does not include operations, maintenance, and finance;
  - e. Be accompanied by a certified and current power of attorney by the attorney-in-fact who executes the bond on behalf of the surety company; and,
  - f. Be enclosed in the bid envelope at the time of the Bid Opening, either in paper copy or as a Bid Bond authorization number provided on the Bid Form.
9. To be acceptable, the Performance and Labor and Material Payment Bonds **shall**:
  - a. Be written on the most current editions of the **SE-355, Performance Bond**, and the **SE-357, Labor and Material Payment Bond**;
  - b. Be issued by a surety company licensed to do business in South Carolina;
  - c. Be issued by a surety company having, at a minimum, a “Best Rating” of “A” (Note: In the case of a construction contract under \$100,000, the agency may, upon written justification and with the approval of the OSE, allow the use of a “B+” rated bond.);
  - d. Have a minimum “Best Financial Strength Category” of “Class V” and in no case less than five (5) times that portion of the contract price that does not include operations, maintenance, and finance;
  - e. Be accompanied by a certified and current power of attorney by the attorney-in-fact who executes the bond on behalf of the surety company;
  - f. Display the Surety's Bond Number; and,
  - g. Remain in effect for a period not less than one (1) year following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.
10. Information on A.M. Best financial Strength Ratings can be found here: <http://www.ambest.com/ratings/guide.asp>