

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE CHIEF PROCUREMENT)
OFFICER FOR CONSTRUCTION)

IN THE MATTER OF:)

DETERMINATION)

OFFICE OF THE ADJUTANT GENERAL)

CASE NO. 2008-0014)

2008 INDEFINITE DELIVERY)

CONTRACT GENERAL)

CONSTRUCTION)

POSTING DATE:)

MAY 16, 2008)

STATE PROJECT E24-D059-SG)
_____)

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from the Office of the Adjutant General (TAG) for cancellation of Notices of Intent to Award Contracts to three entities that submitted bids in response to TAG's solicitation of bids for the Indefinite Delivery of general construction services. [Copies of these Notices are attached as Exhibit "A"] This particular delivery method is permitted by the Consolidated Procurement Code and the Office of the State Engineer in certain circumstances, including this particular instance.¹

The review of this award resulted from a vendor concern that the award, as made, would result in a lack of independent competition on future work awarded to TAG's selected Indefinite Delivery Contractors. In response to this concern, the CPOC initiated a review of the procurement and award.² The CPOC's review of the solicitation documents revealed problems with the solicitation as well.

¹ In cases such as this where contractors will be needed over the period of two years on work that will arise from time-to-time, the Consolidated Procurement Code permits an agency to award Indefinite Delivery Contracts (IDC's). SC Code Ann § 11-35-3310. At the time of TAG's solicitation, procedures for procuring IDC's were, as required by S.C.Code Ann. Regs. 19-445.2145(H), set forth in Appendix E of the 2001 Edition of the Manual for Planning and Execution of State Permanent Improvement Projects – Part II. The procedures that TAG intended to use here were an exception to those procedures, approved by OSE upon request. Under this alternative process, the agency solicits bids on an actual project and then awards Indefinite Delivery Contracts to a number of the lowest bidders. The actual number of awards is decided by the agency but a minimum of three such awards must be made because the agency must compete subsequent delivery orders by soliciting quotes from at least three of those to whom a previous award was made. *See*, the 2008 Manual at § 9.2.6. Implicit in this requirement is that if three contracts are awarded initially, all three must have arrived at their original and all subsequent bids or quotes independent of one another and thereafter be capable of competing with one another for any subsequent work.

² Subsequent to TAG's request and initiation of the CPOC's review, the CPOC received a protest from a bidder on the project, protesting the award on the grounds that there was a lack of independent competition in bidding and that the award would not provide for independent competition on future delivery orders.

FINDINGS OF FACT

On March 10, 2008, TAG advertised for bids for the Project. The Invitation for Bid indicated that the selection process would be “the low bid method using Project E24-N196-SG (a previously completed project).³ [A copy of the Invitations is attached as Exhibit “B”] Section I (A)(3)(b) of the instructions to bidders indicated that award of delivery orders would be based on unit prices listed in the Bid Form. [A copy of the solicitation (bid package), excluding the technical specifications and drawings, is attached as Exhibit “C”] However, the Bid Form did not provide any units of work for bidders to price. Page one of the proposed contract included in the specifications indicated that award of both the Indefinite Delivery Contract and subsequent delivery orders would be based on unit prices. This document states “THE CONTRACTOR’S COST PROPOSALS shall be based on the following method: ... UNIT PRICES as established in Attachments to this contract and listed in Article 2[1].” *Sic.*⁴ As with the Bid Form, Article 21 did not provide a list of units of work that bidders were to price in their bids. Nowhere did the specifications provide any other instructions on how award of Indefinite Delivery Contracts would be made or how subsequent delivery orders would be priced and awarded.

By the time for receiving bids, TAG received bids from 9 bidders. Each bidder bid a lump sum price for the model project. Bidders did not include unit prices in their bids. On April 9, 2008, TAG posted a Notice of Intent to Award Indefinite Delivery Contracts to the three low bidders, Monterey Construction Company, Inc., Southeast Construction Company, Inc., and Boykin Contracting, Inc., intending that in future qualifying projects where contractors were needed, the three low bidders would be asked for lump sum quotes to do the work and be expected to compete against one another for that work. The result would (presumably) be the three lowest bidders of a much larger group (9 total contractors in this case) competing among themselves for such work.

After award, it was subsequently discovered that Monterey and Southeast have the same primary qualifying party, Mr. Monte Lemmon, for purposes of licensure under the Contractors’ Licensing Act. This relationship raised concerns about the ability of Monterey and Southeast to compete against one another with complete independence.

³ Under the solicitation process intended to be used here, an agency is supposed to use an actual project which has not yet been completed and which the low bidder for an Indefinite Delivery Contract will construct.

⁴ The provision wrongly references Article 20, which provides for the governing law, rather than Article 21, which allows for the insertion of additional provisions.

APPLICABLE LAW

INDEPENDENT COMPETITION

In South Carolina corporations rely upon individuals to meet certain licensing requirements of the Contractors Licensing Act. These individuals are known as a “primary qualifying party” (colloquially called “qualifier”). A qualifier is a person who has been designated by a licensee as “the principal individual responsible for directing or reviewing work performed by the licensee in a particular license classification. . . .” S.C.Code Ann. § 40-11-20(18). In order for one individual to qualify for certification as a “primary qualifying party” for two entities, the entities must “engage in business from the same physical location” and the individual (in this case, Mr. Monte Lemmon) must:

- (1) be involved in the operation of both entities on a daily basis;
- (2) derive a livelihood from the operation of both entities;
- (3) have ownership in both entities with at least fifty percent ... ownership in one of the entities. S.C.Code Ann. § 40-11-230(C).

Thus, as a matter of law, it is mandatory that Monteray and Southeast both engage in business from the same physical location. In addition, the applicable law also mandates that Mr. Monte Lemmon be so integrally related to and involved with the operation and the ownership of both entities⁵ that under the circumstances presented here the state cannot consider the companies sufficiently independent of one another to submit competitive and independent bids for State work.⁶

The South Carolina Consolidated Procurement Code has as a primary objective that solicitation and bidding result in cost effective and competitive procurements. *See, e.g.*, S.C.Code Ann. §§ 11-35-20 & 11-35-2730. While bidding by the public is encouraged, the Code also provides that solicitations and awards may be cancelled under certain circumstances. Section § 11-35-1520(7) authorizes a Chief Procurement Officer to cancel an award or contract prior to performance, in accordance with regulations promulgated by the Board, and requires such a decision to be

⁵ Mr. Monte Lemmon is also listed by the Secretary of State as the Registered Agent for both corporations.

⁶ Unlike the Federal Government, the state had previously not implemented any means of trying to assure that bidders arrived at their bids independently in open competition. The Federal Government requires bidders to submit an affidavit to this effect with their bids. Borrowing from this model, the three Chief Procurement Officers have decided to include a similar certification in future solicitations. A draft of this document is attached as Exhibit “D”. A review of this document will show what is meant by the phrase “independent bids.”

supported by a written determination of appropriateness. The Procurement Regulations at 23 S.C.Code Ann. Regs. 19-445.2085(C) states, in pertinent part, as follows:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

* * *

(6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;

(8) For other reasons, cancellation is clearly in the best interest of the State.

While double bidding⁷ is not specifically prohibited nor, under some circumstances, necessarily undesirable,⁸ it is not appropriate or advantageous in this instance, nor is it in the best interest of the State or open competition. In fact, as explained above, the CPOC finds that the solicitation and the bids received do not appear to have been independently arrived at in open competition and that it is therefore in the best interest of the State that the solicitation be cancelled and re-let with this type of double bidding prohibited.⁹ *See, e.g., In Re: Protest of B&D Marine and Industrial Boilers, Inc.*, SCPD 2000-12 (2001).

While the authority to cancel awards and solicitations should be exercised carefully and sparingly, in this case there is no alternative. If TAG proceeds with the awards, it will not be able to issue any delivery orders because it will not have at least three independent and competitive

⁷ The term "double bidding" is used to signify the receipt of multiple bids from two entities from the same or related companies or owners. See cases cited in footnote 8.

⁸ For instance, bids could be received from different divisions of the same corporation or a parent corporation and one or more of its subsidiaries without the knowledge of each other's bid. Similarly, an individual might have legitimate reasons for submitting bids on behalf of two or more of the companies which he owns or controls. This could result from a situation where partial awards are permitted and it is hoped that an award will be made to each of the companies for such amount as it can conveniently perform. None of these situations appear to apply in this instance. *See, e.g. Matter of Siska Construction Co.*, 64 Comp.Gen. 384, B- 218208, B- 218208.2 (1985); *Matter of B.F. Goodrich Co.*, B- 192602 (Comp.Gen. 1979); *Grimaldi Plumbing & Heating Co., Inc.*, B- 183642 (Comp.Gen. 1975); *Comptroller General to the Secretary of HEW*, 39 Comp.Gen. 892, B- 142957 (1960).

⁹ This does not appear to be a case where two subsidiaries of the same corporation or different divisions of a corporation bid against one another unbeknownst to the other. While in this case the bid of one corporation was signed by its General Manager and the other by its President, based upon the handwriting, both bids appear to have been filled out by the same individual (Exhibit E"). Moreover, bid bonds for both entities were attested to on behalf of the principle by the same individual.

Indefinite Delivery Contractors to solicit lump sum quotes from as required by the method of award TAG intended to use here.¹⁰ The only way that TAG can achieve the purpose of the solicitation is to cancel the Notices of Intent to Award and re-solicit the Project and require that all bidders be independent (that this type of double bidding be specifically prohibited).

DEFECTIVE SOLICITATION

Even if there was no improper bidding on this project, the ambiguities in and inadequacy of the solicitation in this case are such that cancellation of the award and solicitation is warranted. Inadequate and ambiguous solicitations lead to procurements that are not cost effective and competitive and that foster unfair and inequitable treatment of bidders. Fair and open competition requires that the specifications adequately notify potential bidders of how awards will be made.¹¹

The solicitation for this project provides insufficient and conflicting information to potential bidders on how TAG intended to award both indefinite delivery contracts and subsequent delivery orders. The Invitation for Bid contemplates a process of award of indefinite delivery contracts based on low lump sum bid on a model project, rather than award for low bid of an actual project. In addition, the Invitation for Bid does not give any insight into the intended method of award for subsequent delivery orders. Both the instructions to bidders and proposed contract contemplate an award of indefinite delivery contracts based on low bid using the sum of extended amounts for unit price bids for specified units of work.¹² Both these documents provide that award of subsequent delivery orders will be priced using these same unit prices. However,

¹⁰ SC Code Ann § 11-35-830 requires that all construction related pre-procurement and post procurement activities be conducted in accordance with the Manual. While the 2008 Edition of the Manual was only published for public comment at the time of this solicitation, for the reasons set forth in footnote 3 to this determination, §§ 9.2.3(A) & 9.2.6(A) of the 2008 Edition of the Manual apply to this solicitation to the extent delivery orders were to be awarded using competitive lump sum quotes rather than unit prices bid on the Indefinite Delivery Contract. These two sections require solicitation of quotes from a minimum of three Indefinite Delivery Contractors. Had TAG intended to award delivery orders using unit prices bid by its Indefinite Delivery Contractors at the time of bidding this project, this solicitation also fails since, as explained later in this determination, no bidders included unit prices in their bids.

¹¹ See e.g., A.G. Schoonmaker Co. v. Resor, 445 F.2d 726, 144 U.S. App. D.C. 250 (D.C. Cir. 1971) where the court quoted with approval the following: "An award cannot be made to either bidder since the invitation failed to provide clear and objective instructions whereunder all bidders were apprised, in advance of bid opening, of the manner in which prices were to be computed in order to be responsive and eligible for award." *Id.* at 728, 144 U.S. D.C. at 252. See also, Matter of Midland Transportation Co., B-201319, 81-2 CPD 89 (Comp. Gen. 1981).

¹² The forms used by TAG for this solicitation were OSE forms designed for bidding Indefinite Delivery services where award is based off either unit prices for units of work specified in the solicitation or a multiplier to be used with unit cost provided in RS Means Cost Estimating Guide. These documents were not intended for a solicitation where award of Indefinite Delivery Contracts and subsequent Delivery Orders would be based on low lump sum bid. A sample of how TAG might have structured this solicitation to accomplish its intended purpose is attached as Exhibit "F".

the specifications and bid form do not contain specified units of work for bidders to bid and bidders did not include unit prices in their bids. Instead, bidders bid a lump sum price for a model project and TAG awarded Indefinite Delivery contracts to the three lowest lump sum bidders. While it was TAG's intent to award delivery orders by soliciting quotes for future work from its three selected indefinite delivery contractors, this intent is not stated anywhere in the solicitation.

Another problem with this solicitation is that the invitation solicited lump sum bids on a model project that had been previously completed. Lump sum bids on a model project that no bidder will perform presents obvious issues. A bidder need only bid a nominal amount or even zero dollars in order to be responsive to the solicitation and be selected for award of the contract with no risk that he will actually have to perform any work for the amount of his bid. Such a process is not a competitive process.

Though the model project was a previously completed project, the specifications do not clearly indicate this. However, there are clues. There is a 2004 date on the drawings and technical specifications; the Invitation and Instructions to Bidder state that there are no guarantee as to the minimum amount of work to be awarded under an Indefinite Delivery Contract, and the scope of work for the lump sum price on the bid form does not describe the work in the drawings and technical specifications. In the case of the bid form, the form seems to indicate that the lump sum bid is the bidder's price to provide an indefinite amount of services over the next two years rather than estimate of the cost to perform the model project. This lack of detail and the ambiguities in the documents only serve to create confusion for anyone looking only at the bid package (i.e. the written documents: Invitation, Instructions to Bidders, specifications, etc.) to determine the scope of the solicitation.¹³

In addition to the grounds given in the previous discussion for cancellation of the award and solicitation after award but prior to performance, the CPOC may cancel an award and solicitation when he determines that "Inadequate or ambiguous specifications were cited in the invitation." 23 S.C.Code Ann. Regs. 19-445.2085(C)(1). Here, the specifications provide conflicting information on how indefinite delivery contracts and subsequent delivery orders would be

¹³ It is possible that TAG conveyed much of the information missing from the specifications and clarified many of the ambiguities orally at the mandatory pre-bid meeting. However, oral communications are not binding and cannot be used to cure deficiencies in the specifications. *See e.g.* Section IV of the Instructions to Bidders for this project, Article 6.6 of the 2001 Manual, and Article 6.1.5.1 of the 2008 Manual.

awarded and where wholly inadequate for the method of award intended by TAG. Therefore, the CPOC finds that it is in the best interest of the State that the solicitation be cancelled and re-let using documentation that accurately notifies potential bidders of the intended method of award.

DETERMINATION

The S.C.Code Ann. § 11-35-1520(7) authorizes the cancellation of awards or contracts after award but before performance in accordance with regulations promulgated by the Board. Regulation 19-445.2085(C) allows the cancellation of an award prior to performance only upon written determination of the chief procurement officer that cancellation is warranted in accordance with the provisions set forth therein. In this case two of the three bids resulting in the awards were not arrived at independently and the solicitation was fatally flawed. As a result, I find it to be in the best interest of the State that the awards be cancelled and that TAG issue a new solicitation for the project with the additional requirement that all bids be independently arrived at in open competition.

For the foregoing reasons, the Office of the Adjutant General's Notices of Award and the solicitation for the Project are hereby cancelled and this matter is remanded to the Office of the Adjutant General to initiate a new solicitation, consistent with its programmatic needs, in accordance with the foregoing.



John St. C. White
Chief Procurement Officer
For Construction

16 May 08
Date

STATEMENT OF THE RIGHT TO APPEAL

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site:
www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 66.1 of the 2005 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2005 S.C. Act No. 115, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003). Copies of the Panel's decisions are available at <http://www.procurementlaw.sc.gov>.



SE-370 Notice of Intent to Award

EXH. A

RECV'D BID CONTROL

APR 14 '08 MD 10:24AM

AGENCY: South Carolima Military Department, Office of The Adjutant General

(Name)

PROJECT: E24 - D059 - SG - Indefinite Delivery Contract - General Construction

(Number)

(Name)

TO ALL BIDDERS:

The Agency has determined that the below-named Bidder is responsible in accordance with the requirements of the Bidding Documents and has submitted the lowest responsive Bid. The Agency hereby announces its intent to enter into a contract with this Bidder for the construction of the above-named Project, subject to the provisions of SC law.

NAME OF BIDDER: Boykin Contracting, Inc.

DATE BIDS WERE RECEIVED:

April 03, 2008

AMOUNT OF BASE BID:

\$112,000.00

ALTERNATE(S) ACCEPTED: # _____

TOTAL:

\$0.00

TOTAL AMOUNT OF BASE BID PLUS ACCEPTED ALTERNATE(S):

\$112,000.00

Remarks: (In accordance with Chapter 6 of the OSE Manual, explain any negotiations that resulted in a change in either the Base Bid or the accepted Bid Alternates)

RIGHT TO PROTEST:

Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with the intended award or award of this Contract may protest to the State Engineer in accordance with Section 11-35-4210 of the SC Code of Laws, as amended, within 15 days of the date the *Notice of Intent to Award* is posted.

Gary B Grant
(Signature of Awarding Authority)

9 APRIL 08
(Date Posted)

Gary B. Grant

(Print or Type Name of Awarding Authority)

Deputy Facility Management Officer

(Awarding Authority Title)

INSTRUCTIONS TO AGENCY:

1. MAIL A COPY OF THE FINAL BID TABULATION TO ALL BIDDERS AND OSE WITHIN 10 DAYS OF BID OPENING.
2. POST A COPY OF THIS FORM ON THE DATE AND AT THE LOCATION ANNOUNCED AT BID OPENING.
3. MAIL A COPY OF THIS FORM TO ALL BIDDERS AND THE OSE.



SE-370 Notice of Intent to Award

AGENCY: South Carolima Military Department, Office of The Adjutant General

(Name)

PROJECT: E24 - D059 - SG - Indefinite Delivery Contract - General Construction

(Number)

(Name)

TO ALL BIDDERS:

The Agency has determined that the below-named Bidder is responsible in accordance with the requirements of the Bidding Documents and has submitted the lowest responsive Bid. The Agency hereby announces its intent to enter into a contract with this Bidder for the construction of the above-named Project, subject to the provisions of SC law.

NAME OF BIDDER: Monteray Construction Co., Inc.

DATE BIDS WERE RECEIVED:

April 03, 2008

AMOUNT OF BASE BID:

\$72,110.00

ALTERNATE(S) ACCEPTED: # _____

TOTAL:

\$0.00

TOTAL AMOUNT OF BASE BID PLUS ACCEPTED ALTERNATE(S):

\$72,110.00

Remarks: *(In accordance with Chapter 6 of the OSE Manual, explain any negotiations that resulted in a change in either the Base Bid or the accepted Bid Alternates)* _____

RIGHT TO PROTEST:

Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with the intended award or award of this Contract may protest to the State Engineer in accordance with Section 11-35-4210 of the SC Code of Laws, as amended, within 15 days of the date the *Notice of Intent to Award* is posted.

Gary B Grant
(Signature of Awarding Authority)

9 APR 08
(Date Posted)

Gary B. Grant
(Print or Type Name of Awarding Authority)

Deputy Facility Management Officer
(Awarding Authority Title)

INSTRUCTIONS TO AGENCY:

1. MAIL A COPY OF THE FINAL BID TABULATION TO ALL BIDDERS AND OSE WITHIN 10 DAYS OF BID OPENING.
2. POST A COPY OF THIS FORM ON THE DATE AND AT THE LOCATION ANNOUNCED AT BID OPENING.
3. MAIL A COPY OF THIS FORM TO ALL BIDDERS AND THE OSE.



SE-370 Notice of Intent to Award

AGENCY: South Carolima Military Department, Office of The Adjutant General

(Name)

PROJECT: E24 - D059 - SG -

(Number)

Indefinite Delivery Contract - General Construction

(Name)

TO ALL BIDDERS:

The Agency has determined that the below-named Bidder is responsible in accordance with the requirements of the Bidding Documents and has submitted the lowest responsive Bid. The Agency hereby announces its intent to enter into a contract with this Bidder for the construction of the above-named Project, subject to the provisions of SC law.

NAME OF BIDDER: Southeast Construction Co.

DATE BIDS WERE RECEIVED:

April 03, 2008

AMOUNT OF BASE BID:

\$75,925.00

ALTERNATE(S) ACCEPTED: # _____

TOTAL:

\$0.00

TOTAL AMOUNT OF BASE BID PLUS ACCEPTED ALTERNATE(S):

\$75,925.00

Remarks: (In accordance with Chapter 6 of the OSE Manual, explain any negotiations that resulted in a change in either the Base Bid or the accepted Bid Alternates)

RIGHT TO PROTEST:

Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with the intended award or award of this Contract may protest to the State Engineer in accordance with Section 11-35-4210 of the SC Code of Laws, as amended, within 15 days of the date the *Notice of Intent to Award* is posted.

Gary B Grant
(Signature of Awarding Authority)

9 APR 08
(Date Posted)

Gary B. Grant
(Print or Type Name of Awarding Authority)

Deputy Facility Management Officer
(Awarding Authority Title)

INSTRUCTIONS TO AGENCY:

1. MAIL A COPY OF THE FINAL BID TABULATION TO ALL BIDDERS AND OSE WITHIN 10 DAYS OF BID OPENING.
2. POST A COPY OF THIS FORM ON THE DATE AND AT THE LOCATION ANNOUNCED AT BID OPENING.
3. MAIL A COPY OF THIS FORM TO ALL BIDDERS AND THE OSE.

MONTERAY CONSTRUCTION CO INC

8130 GARNERS FERRY RD

COLUMBIA, SC 29209

(803) 776-4444

License number: 10862

License type: GENERAL CONTRACTOR

Status: ACTIVE

Expiration: 10/31/2008

First Issuance Date: 01/01/1992

Classification: BD5

Supervises

MONTE LEMMON - (CQG)

[Click here for classifications key](#)

SOUTHEAST CONSTRUCTION CO INC
8130 GARNERS FERRU ROAD
COLUMBIA, SC 29209
(803) 776-4444

License number: 107624
License type: GENERAL CONTRACTOR
Status: ACTIVE
Expiration: 10/31/2008
First Issuance Date: 11/25/2002
Classification: BD4

Supervises
MONTE LEMMON - (CQG)

[Click here for classifications key](#)



Secretary of State Search

Mark Hammond's Office


[Main Page](#)
[What's New](#)
[Forms](#)
[Fee Schedule](#)
[Office Directory](#)
[Where Do I Find?](#)
[Search](#)
[Feedback](#)

Office of the South Carolina Secretary of State

Business Filings Division

Information for: **MONTERAY CONSTRUCTION COMPANY, INC.**

[Check Charities Database](#)

Note*** This online database was last updated on 04/17/2008 see our Disclaimer

DOMESTIC / FOREIGN: Domestic
 STATUS: Good Standing
 STATE OF INCORPORATION / ORGANIZATION: SC
 For Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME: MONTE ANDREW LEMMON
 ADDRESS: 4010 ROSEWOOD DR COLUMBIA
 SC
 CITY:
 STATE:
 ZIP:
 SECOND ADDRESS:

FILE DATE: 05/25/1978
 EFFECTIVE DATE: 05/25/1978
 DISSOLVED DATE:

CORPORATION HISTORY RECORDS

Code	File Date	Comment	Document
AMENDMENT(DOMESTIC)	05/16/1984	CH FM MONTERAY INC	FILM
INCORPORATION (DOMESTIC)	05/25/1978	ART	FILM

[Return to Previous Page](#)



Secretary of State Search

Mark Hammond's Office


[Main Page](#)
[What's New](#)
[Forms](#)
[Fee Schedule](#)
[Office Directory](#)
[Where Do I Find?](#)
[Search](#)
[Feedback](#)

Office of the South Carolina Secretary of State

Business Filings Division

Information for: **SOUTH EAST CONSTRUCTION COMPANY, INC.**

[Check Charities Database](#)

Note*** This online database was last updated on 04/17/2008 see our Disclaimer

DOMESTIC / FOREIGN: Domestic
 STATUS: Good Standing
 STATE OF INCORPORATION / ORGANIZATION: SOUTH CAROLINA
 For Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME: MONTE A LEMMON
 ADDRESS: 8130 GARNERS FERRY RD
 CITY: COLUMBIA
 STATE: SC
 ZIP: 29209
 SECOND ADDRESS:

FILE DATE: 10/01/1991
 EFFECTIVE DATE: 10/01/1991
 DISSOLVED DATE:

CORPORATION HISTORY RECORDS

Code	File Date	Comment	Document
AMENDMENT(DOMESTIC)	12/30/2002	CH NM FR-MONTECO, INC./CH AGT ADD	FILM
INCORPORATION (DOMESTIC)	10/01/1991	ART	FILM

[Return to Previous Page](#)

SOUTH CAROLINA BUSINESS OPPORTUNITIES

EXH. B

Published by Materials Management Office – R. Voight Shealy, Director

March 10, 2008

Volume 28, Issue 20

© 2008 Materials Management Office
A Listing, Published Twice Per Week, of
Proposed Procurements in Construction,
Information Technology, Supplies & Services
As Well As Other Information of Interest to the
Business Community.

All Rights Reserved. No Part of This Publica-
tion May Be Reproduced, Stored in a Re-
trieval System or Transmitted in Any Form Or
By Any Means, Electronic, Mechanical, Pho-
tocopying Or Otherwise, Without Prior Written
Permission of the Publisher.

Sealed Bids Listed in This Publication Will Be
Received at the Time, Place & Date Indicated
in the Announcements & Then Be Publicly
Opened & Read Aloud. The State/Owner
Reserves the Right to Reject Any Or All Bids
& to Waive Technicalities.

CONSTRUCTION

Invitation for Construction Bids

SCBO Notes referred to in State Agency adver-
tisements appearing in the Construction Section of
SCBO can be found at the end of this issue.
Please verify requirements for non-State agency
advertisements by contacting the agency / owner.

Project Name: WOODROW COLLEGE
ROOF REPLACEMENT
& EXTERIOR REPAIRS

Project Number: H27-6046-TR

Location: University of South Carolina,
Columbia

Applicable SCBO Notes: 2, 4, & 5

Bid Security Required: Yes

Performance Bond Required: Yes

Payment Bond Required: Yes

Description of Project: Base Bid Number
One work includes removal of ex-
isting slate roof system & all re-
lated sheet metal & accessories.
Provide & install new slate roof
system with copper flashings,
rough carpentry underlayment,
waterproof underlayment & all re-
lated accessories. Project size is
approximately 148 squares. Also
included are minor structural re-
pairs / modifications to wood deck
& framing & building envelope re-
pairs (stucco, windows, fascia &
soffit work) for Woodrow College
(duration 83 calendar days). Base
Bid Number Two work includes all
work of Base Bid Number One
except duration is 125 calendar
days in lieu of 83 calendar days.
The contractor will be subject to a
performance appraisal as defined in
the Manual for Planning & Exe-
cution of State Permanent Im-
provements, Part II.

Construction Cost Range: \$500,000-
\$1,000,000.00

Architect/Engineer: ADC Engineering Inc.

A/E Contact: Richard L. Cook, Jr.

A/E Address: 1226 Yeamans Hall Rd.,
Hanahan, SC 29410

A/E Telephone: (843) 566-0161

A/E Fax: (843) 566-0162

A/E E-mail:

amancam@adcengineering.com

Plans On File At:

AGC: Charleston & Columbia, SC

Dodge: Charleston & Columbia, SC

Other: Reed, GA

Plans May Be Obtained From: A/E

Plan Deposit: \$50.00, Refundable

Pre-Bid Conf./Site Visit: Mandatory

Pre-Bid Date/Time: 3/25/08 – 2:00pm

Place: Conference Room #53, 743 Greene
St., Columbia, SC 29201

Agency/Owner: University of South Caro-
lina

Name & Title of Agency Coordinator:
David Northam, Project Manager

Address: 743 Greene St., Columbia, SC
29201

Telephone: (803) 777-9346

Fax: (803) 777-8739

E-mail: dhn@fmc.sc.edu

Bid Closing Date/Time: 4/8/08 – 2:00pm

Place: Same as pre-bid conference

Hand Deliver Bids To: University of South
Carolina, 743 Greene St., Colum-
bia, SC 29208, Attn: Lind Jackson

Mail Bids To: Same as hand delivery

Project Name: INDEFINITE DELIVERY CONTRACT – GENERAL CONSTRUCTION

Project Number: E24-D059-SG

Location: Within the State of South Caro-
lina

Applicable SCBO Notes: 2, 4, & 5

Bid Security Required: Yes

Performance Bond Required: Yes

Payment Bond Required: Yes

Description of Project: Up to three con-
tractors will provide construction,
restoration, renovations & / or re-
pair services as directed by the
SC Military Department, Office of
the Adjutant General, Facilities
Management Office for facilities
located in the State of South
Carolina. The selection process
will be the low bid method using
Project E24-N196-SG, Toilet /
Break Room Renovations,
USPFO Warehouse. There is no
minimum amount of work that will
be guaranteed under this con-
tract. The contract will be for a

term of two years. Each contrac-
tor shall have a current General
Contractors License (Building
Group #4) at the time of the bid &
throughout the entire period of the
contract. The contractor will be
subject to a performance ap-
praisal as defined in the Manual
for Planning & Execution of State
Permanent Improvements, Part II

Construction Cost Range: \$750,000
maximum IDC

Architect/Engineer: SC Military Depart-
ment, Office of the Adjutant Gen-
eral, Facilities Management Of-
fice

A/E Contact: Mike Young

A/E Address: 1 National Guard Rd., Co-
lumbia, SC 29201

A/E Telephone: (803) 806-4305

A/E Fax: (803) 806-4329

A/E E-mail: youngmj@tag.scmd.state.sc.us

Plans May Be Obtained From: TAG-FMO

Plan Deposit: \$0.00

Pre-Bid Conf./Site Visit: Mandatory

Pre-Bid Date/Time: 3/21/08 – 1:00pm

Place: First Floor Auditorium, SCMD-TAG,
1 National Guard Rd., Columbia

Agency/Owner: SC Military Department,
Office of the Adjutant General,
Facilities Management Office

Name & Title of Agency Coordinator:
Gary B. Grant, PE

Address: 1 National Guard Rd., Columbia,
SC 29201

Telephone: (803) 806-4467

Fax: (803) 806-4329

E-mail: grantgb@tag.scmd.state.sc.us

Bid Due Date/Time: 4/3/08 – 3:00pm

Place: First Floor Auditorium, SCMD-TAG,
1 National Guard Rd., Columbia

Hand Deliver Bids To: SCMD-TAG-FMO,
1 National Guard Rd., Columbia,
SC 29201, Attn.: Gary B. Grant

Mail Bids To: SCMD-TAG-FMO, 1 National
Guard Rd, Columbia, SC 29201,

Attn.: Gary B. Grant

Project Name: WHITTEN CENTER – WORK ACTIVITIES CENTER – ROOF REPLACEMENT

Project Number: J16-9807-LC-A

Location: Clinton, SC

Applicable SCBO Notes: 2, 4, & 5

EXH. C



INDEFINITE DELIVERY CONTRACT

PROJECT MANUAL

**SOUTH CAROLINA MILITARY DEPARTMENT
OFFICE OF THE ADJUTANT GENERAL**

**IDC – GENERAL CONSTRUCTION
MARCH 2008 TO APRIL 2010
STATE PROJECT No. E24 – D059 - SG**

PREPARED BY:

**FACILITY MANAGEMENT OFFICE
OFFICE OF THE ADJUTANT GENERAL
SOUTH CAROLINA MILITARY DEPARTMENT
1 NATIONAL GUARD ROAD
COLUMBIA, SOUTH CAROLINA 29201**

MARCH 2008

TABLE OF CONTENTS

PROJECT NUMBER: E24-D059-SG

PROJECT NAME: IDC – General Construction

<u>SECTION</u>	<u>NUMBER OF PAGES</u>
Table of Contents	2
Invitation for Bids (SE-310 - 07/01 Edition)	1
Instructions to Bidders (00200-IDC – 07/01 Edition)	4
Bid Bond (SE-335 - 07/01 Edition).....	1
Bid Form (SE-330 - 07/01 Edition).....	4
South Carolina Military Department Contract for the Indefinite Delivery of Construction Services.....	10
Performance Bond (SE-355 - 07/01 Edition)	2
Labor and Material Payment Bond (SE-357 - 07/01 Edition)	2
Construction Services Delivery Order (SE-680 - 07/01 Edition)	1
Construction Services Delivery Order Modification (SE-690 - 07/01 Edition).....	1
Project Estimating Sheet	2
Index.....	1
Attachment I	
Project E24-N196-SG Toilet Renovations, USPFO Warehouse, Plans & Specifications.....	
Cover Sheet.....	1
A101 R1, Floor Plans, Schedules & Details	1
A102, Reflected Ceiling Plan, Details & Elevations.....	1
M101, Mechanical Floor Plan.....	1

M201, Mechanical Details, Notes, Schedules & Legend.....1

P101, Plumbing Floor Plans – Waste, Vent & Supply Piping1

P201, Plumbing Demolition Plan, Details, Notes, Schedule & Legend1

E1, Electrical Lighting Plan1

E2, Electrical Power Plan.....1

00200-IDC

INSTRUCTIONS TO BIDDERS FOR

INDEFINITE DELIVERY CONTRACT - CONSTRUCTION

SECTION I - GENERAL

A. General Information

1. It is the intention of SC Military Department, Office of Adjutant General, Facilities Management Office (Agency) to solicit bids for construction work generally described as construction renovations, repairs and restorations for facilities owned or operated by the Agency. Work is to be performed in the following locale(s): throughout the State of South Carolina

(insert general locations of work areas)

2. The Work to be done under this Contract will be identified throughout the term of the Contract and will be issued through Delivery Orders assigned to the Contract.

3. Bidder agrees to perform work for the advertised discipline in the following manner: *(A/E to check one)*

a. The cost of the work to the Agency will be determined using a multiplier times the published unit prices times the quantity of the work to be performed. Bidders agree to use the following published cost data guide(s):

(identification of cost data guides)

b. The Bidder will supply unit prices as listed in the Bid Form.

4. Prices listed in the cost guides or in the unit prices furnished by the Bidder are inclusive of all costs to the Contractor. 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.

5. The Contract will be for a period not to exceed two years.

6. The Agency does not guarantee a minimum amount of work, nor does it guarantee the size or quantity of any work that may be awarded under this Contract.

7. This solicitation does not commit the Agency to award a contract nor to pay for any costs incurred by the Bidder in the preparation of a Bid.

8. The Agency may, in its sole discretion, award up to 3 contracts under this procurement. *(not to exceed 3)*

9. The Indefinite Delivery Contract shall allow the Agency to award a total amount of work under this contract not to exceed \$750,000 nor shall any single Delivery Order exceed \$150,000 per project or as follows:

10. Other information concerning the Work of this Invitation. *(to be inserted by Agency)*

This solicitation does not commit the TAG-FMO to award a contract, to pay any costs incurred in the preparation of a Bid or to procure or contract for the services. If awarded, there is no guarantee of a Contractor receiving a Delivery Order.

B. Architect/Engineer

1. The Architect or Engineer of Record (A/E) will be identified on each Delivery Order.

2. In the absence of an A/E the Agency will act in that capacity.

C. Contractor's Licensing

1. Bidders must be properly licensed in the discipline and the Group Classification to permit an award of Delivery Orders to a total of \$150,000 maximum per single Project.

2. This license must be maintained for the term of the Contract.

D. Subcontractors

1. Some work may be required to be done under the work of an Delivery Order that will require performance by a subcontractor. The terms and conditions of the Contract must be passed to the sub-contractor to protect the rights of the Agency.

2. Subcontractors shall be properly licensed as required by the S.C. Contractors' Licensing Law.

E. Authority

This Indefinite Delivery Contract-Construction is being solicited pursuant to Section 11-35-3310 of the South Carolina Consolidated Procurement Code and related Statutes, as amended.

F. Definition

Any reference to "Manual" means the Manual for *Planning and Execution of State Permanent Improvements-Part II* as issued by the Office of State Engineer (OSE).

INSTRUCTIONS TO BIDDERS FOR INDEFINITE DELIVERY CONTRACT - CONSTRUCTION

SECTION II - PRE-BID CONFERENCE

- A. The Agency may hold a mandatory pre-bid conference as a prerequisite to bidding as shown on Form SE-310, *Invitation for Bids*.
- B. The Agency has the right to schedule more than one mandatory pre-bid conference if deemed to be in the best interest of the State. If a mandatory pre-bid conference is held and only one prospective bidder attends, then:
 - 1. The conference may be canceled and a new mandatory or non-mandatory pre-bid conference advertised to be held at a later date; or,
 - 2. An additional mandatory or non-mandatory pre-bid conference may be advertised and held at a later date and must be attended by at least one additional company representative; or,
 - 3. The project will be advertised for open competitive bidding.
- C. The A/E will issue an addendum after a mandatory pre-bid conference listing the names of all companies that were represented at the conference. Only companies represented will be allowed to submit bids.

SECTION III - OBTAINING BID DOCUMENTS

- A. Bidders may obtain bid documents as stated in Form SE-310.
- B. Deposits and refunds will be as stated in the Form SE-310.
- C. Bidders shall use complete sets of documents. No partial sets will be issued.

SECTION IV - EXAMINATION OF BID DOCUMENTS

- A. The Bidder shall carefully examine the bid documents. Any requests for substitution, questions, clarifications or interpretations of the bid documents shall be made in writing to the A/E at least 10 days prior to Bid Date. No oral instruction will be given prior to bidding.
- B. Should the Bidder notice any errors, conflicts or other inconsistencies with the bidding documents, the Bidder shall notify the A/E.
- C. Corrections, interpretations and changes, which modify the bid documents, will be made by official addendum only. Any other form of communication, oral or written, are unofficial and non-binding on the Agency.

SECTION V - ADDENDA

If the A/E amends the contract documents prior to bidding, an addendum will be issued. All addenda shall be sent to all bidders of record. No addendum will be issued later than the 5th calendar day prior to Bid Date except to withdraw the bid or to extend the date for receipt of bids. Bidders are responsible to ascertain that they have received copies of all addenda issued prior to bidding. Bids received that do not acknowledge receipt of all addenda shall be rejected as non-responsive except for the following reasons:

- 1. The addendum only gives clarifications or list attendees at a mandatory pre-bid conference; or,
- 2. The bid received clearly indicates that the bidder received the addendum; or,
- 3. The addendum clearly would have had no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery as defined in Chapter 6 of the *Manual*, and does not affect the relative standing of the Bidders. Under no circumstances can the bid amount be changed or modified.

SECTION VI - PREPARATION AND DELIVERY OF BIDS

- A. Bidders are cautioned to completely fill-in information requested on the Form SE-330, *Bid Form*, contained in the Project Manual using non-erasable media.
- B. Bidders are not to qualify their bid by including extraneous information on the Form SE-330.
- C. Bid Security shall accompany the bid in the amount of \$7,500.00. Failure of the Bidder to enter into an agreement with the Agency, or to correct any Bid deficiencies as required by the *Manual* shall cause the Bid Security to be forfeited to the Agency. Acceptable Bid Security shall be one of the following:
 - 1. Form SE-335, *Bid Bond*, made payable to the Agency and issued by a surety company licensed to do business in South Carolina.
 - 2. An electronic Bid Bond authorization number issued by a firm or organization authorized by the surety to receive, authenticate and issue binding electronic Bid Bonds on behalf of the surety.
 - 3. A certified cashier's check made payable to the Agency.
- D. To be acceptable, a Bid Bond shall:
 - 1. 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". In addition, the surety shall have a minimum "Best Financial Strength Category" of "Class V, and in no case less than five (5) times the maximum Delivery Order amount.
 - 2. Be accompanied by a certified and current power of attorney by the attorney-in-fact who executes the bond on the behalf of the surety company; and,
 - 3. Be enclosed in the bid envelope at the time of Bid Opening, either in paper copy or as a Bid Bond authorization number provided on the Bid Form.

INSTRUCTIONS TO BIDDERS FOR INDEFINITE DELIVERY CONTRACT - CONSTRUCTION

- E. The Agency shall have the right to retain the Bid Security of the three lowest responsive bidders for each contract award anticipated until:
 - 1. The contracts have been executed; or
 - 2. The specified time for bid acceptance has elapsed so that Bids may be withdrawn; or
 - 3. All Bids have been rejected.
- F. Bidders submitting Bid Security not meeting the required amount or surety rating and financial strength shall have one working day from bid opening to cure the deficiency or the bid shall be declared non-responsive. Bid security must be at least 80% of the required amount to be eligible for correction.
- G. Bids and Bid Security, and any other documents required to be submitted with the Bid should be enclosed in a sealed, opaque envelope. The envelope should be addressed to the party receiving the Bids and shall be identified with the project name, number, and the Bidder's name and address.
- H. The Bidder shall assume full responsibility for timely delivery of the Bid at the appropriate location designated for the receipt of Bids as shown on the Form SE-310.
 - 1. Bidders attending the Bid opening should bring their Bids to the place of the Bid opening and deliver the Bid to the procurement officer of the Agency or his designee prior to the time of the Bid opening.
 - 2. Bids sent by mail or special delivery service (UPS, Federal Express, etc.) should be labeled "SEALED BID ENCLOSED", and shall be addressed to the Agency designated purchasing office as shown in the Form SE-310. Delivery of Bids to the above location shall be prior to the time of Bid opening. Bids not received at the above location or the Agency's mail room prior to the time of Bid opening will be subject to rejection.
- I. Bidders should include all special documents requested to be submitted with the Bid. If these documents are not included with the Bid, the Bidder shall have 24 hours from the time set for the Bid opening to submit these documents or the Bid may be considered non-responsive.

SECTION VII - BIDDER'S REPRESENTATIONS

- A. By submitting a Bid for this solicitation, the Bidder certifies that it:
 - 1. Is the legal entity for the company submitting the Bid, and have full authority to bind the company into contractual obligations with the Agency for work as stated in the Contract Documents;
 - 2. Is properly licensed in accordance with the South Carolina Contractors' Licensing Law to perform the work as required in the Contract Documents;
 - 3. Understand the Bidding Documents to the extent that they are able to offer a bid for future work in accordance with the Contract Documents;
 - 4. Will maintain a drug-free workplace in accordance with Title 44, Chapter 107 of the SC Code of Laws;
 - 5. Is qualified to submit a bid by attendance at the mandatory pre-bid conference if required;
 - 6. Has the financial means to complete the work offered by this solicitation;
 - 7. Is able to obtain Performance and Labor & Material Payment Bonds in the amounts of \$150,000 each and maintain a minimum total bonding capacity of \$750,000 available for this Contract for the duration of the Contract.

SECTION VIII - WITHDRAWAL OR REVISION OF BIDS PRIOR TO BID OPENING

Prior to the time and date designated for receipt of Bids, a Bid may be modified or withdrawn by notice to the party receiving Bids. Any modifications shall be in writing on the Bid Form and over the signature of the Bidder.

SECTION IX - OPENING OF BIDS

- A. Bids received on time will be opened publicly and read aloud.
- B. The date and location of the posting of the Form SE-370, *Notice of Intent to Award*, will be announced.
- C. The Agency shall send a copy of the final Bid Tabulation to all Bidders within 10 working days after receipt of Bids.
- D. The Agency shall send a copy of the Form SE-370 to all Bidders after posting.
- E. If only one Bid is received, the Bid shall be opened and considered.

SECTION X - IRREGULAR BIDS

- A. The Agency shall have the right to reject any or all Bids, reject a Bid not accompanied by a required Bid security or other data required by the Bidding documents, or reject a Bid that is in any way incomplete or irregular.
- B. Bids shall be rejected for the following reasons, which shall not be limited to:
 - 1. Failure by a Bidder to be represented at a mandatory Pre-Bid Conference.
 - 2. Failure to deliver the Bid on time and at the place required.
 - 3. Failure to comply with Bid security requirements except as allowed by the Bidding Documents.
 - 4. Showing any modification(s) or exception(s) qualifying the Bid.
 - 5. Faxing a Bid directly to the Agency or their representative.
 - 6. Failure to include in the Bid envelope all items required by the Bid Documents except as allowed by Paragraph I in Section VI.

INSTRUCTIONS TO BIDDERS FOR INDEFINITE DELIVERY CONTRACT - CONSTRUCTION

- C. Bids shall not be rejected for the following reasons, which shall not be limited to:
 1. Failure to write "Sealed Bid Enclosed" on the outside of the mailing envelope.
 2. Failure to seal the Bid envelope.
 3. Listing a modification to the Bid on the outside of the envelope (such modifications will not be considered).
 4. Failure to list any information on the envelope other than which may be required by law.
 5. Providing a fax copy or other reproduction of any Bidding Documents in the Bid envelope.
 6. Failure of the Bidder to sign the Bid, provided it is accompanied by a properly prepared Bid security, or other information, as required.
 7. Providing a reproduction of a signature on Bidding documents.

SECTION XI - CONSIDERATION OF BIDS

- A. Failure by a Bidder to correct any deficiency as requested may cause the Bid to be rejected as non-responsive.
- B. The Agency shall not award a contract before the sixteenth day after the Form SE-370 is posted. If only one Bid is received and determined to be responsive and responsible, award may be made after posting the Form SE-370 without the sixteen-day waiting period.
- C. Contractor's Qualifications - A prospective Contractor shall be considered as meeting the state standards of responsibility when the firm has:
 1. Appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate his ability 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;
 5. Supplied all necessary information in connection with the inquiry concerning responsibility;
- D. Each Bidder submitting a Bid shall, upon request, submit a completed Form SE-350, *Questionnaire for Contractors*.

SECTION XII - AWARD OF CONTRACT

- A. At the conclusion of the sixteen-day waiting period after the Form SE-370 is issued, the Agency will issue to the successful Bidder(s) *copies of the Contract for the Bidder's signature*.
- B. The successful Bidder shall obtain, and forward to the Agency, a copy of the certificate of insurance as required (see Section IX) and the copies of the Contract signed by the Bidder.
- C. After approval by the Office of State Engineer, if required, the Agency may sign the Contract and forward a fully executed contract to the Bidder.
- D. After the contract is fully executed Work may be awarded to the successful Bidder in the manner described in the *Contract*.

SECTION XIII - BONDS

When required by the Agency, the Contractor shall provide and pay the cost of Performance and Labor and Material Payment Bonds as described and defined in Article 13 of the *Contract*.

SECTION XIV - OTHER INFORMATION

- A. Bids sent by mail or special delivery service (UPS, Federal Express, etc.) should be labeled "Sealed Bid Enclosed", and shall be addressed to the Agency designated purchasing office as follows:

Agency Name: South Carolina Military Department, Office of The Adjutant General, Facilities Management Office
Agency Designated Purchasing Office: Deputy Facility Management Officer
Delivery Address: 1 National Guard Road
(include building and room number) Columbia, SC 29201

Name and Phone of Agency Representative: Gary B. Grant, PE / 803-806-4467

- B. Special documents required to be submitted with the Bid for this project include:
None

- C. The location of the posting of the Form SE-370 shall be:

Name or Number of Room/Area of Posting: 1st Floor Front Lobby
Name of Building where Room/Area is Located: South Carolina Military Department
Address of Building: 1 National Guard Road
Columbia, SC 29201

END OF DOCUMENT



SE-335 Bid Bond

KNOW ALL PERSONS BY THESE PRESENTS THAT

(Insert full name and address or legal title of Bidder)

hereinafter referred to as "Principal," and

(Insert full name and address of principal place of business of Surety)

a corporation duly organized and existing under the laws of the State of _____, with its principal office in the City of _____, and authorized to transact business in this State, hereinafter called the "Surety", are jointly and severally held and firmly bound unto South Carolina Military Department, Office of the Adjutant General, 1 National Guard Road, Columbia, SC 29201

(Insert full name of Agency)

hereinafter referred to as "Obligee", the sum of \$ \$7,500.00 , being the sum of the Bond to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted to Obligee the accompanying bid incorporated by reference herein, dated as shown, to enter into a contract in writing for

E24-D056-SG - Indefinite Delivery Contract-General Construction

D059

(Insert the State Project Number and Name as found on the SE-330, Bid Form)

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that default of Principal shall occur upon the failure of the Principal to deliver, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Obligee), the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents. This obligation shall be null and void if the Obligee shall accept Principal's Bid and Principal delivers, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Obligee), the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents; or all Bids are rejected by Obligee; or Obligee fails to issue a Notice of Intended Award to Principal within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Principal). Payment under this Bond shall be due and payable in full upon default of Principal and within 30 calendar days after receipt by Principal and Surety of written notice of default from Obligee, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue the Notice of Intended Award agreed to in writing by Obligee and Principal. 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 Bidding Documents and the laws of the State of South Carolina. Surety shall cause to be attached to the Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

IN WITNESS WHEREOF, Surety and Principal, intending to be legally bound hereby, subject to the terms stated above, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent or representative.

DATED this _____ day of _____, _____ **BOND NUMBER** _____

PRINCIPAL

SURETY

(Principal's Name)

(Surety's Name)

BY:

BY:

(Signature and Title)

(Signature and Title)
(Attach Power of Attorney)

ATTEST:

ATTEST:

(Signature and Title)

(Signature and Title)



SE-330 Bid Form

Bids shall be submitted only on SE-330

BID SUBMITTED BY: _____
(Bidder's Name)

BID SUBMITTED TO: South Carolina Military Department, Office of The Adjutant General, Facilities Management Office
(Agency Name)

FOR PROJECT: E24 - D059 - SG - Indefinite Delivery Contract - General Construction
(Number) (Name)

OFFER

1. In response to the Form SE-310, *Invitation for Construction Bids*, 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 **AGENCY** in the form 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 Section 11-32-3030(1) of the SC Code of Laws, as amended, **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**, by submitting this Bid, affirms that it has carefully examined the Bidding Documents and the other related data identified in the Bidding Documents, has visited the actual location of the Work, has satisfied itself as to all conditions and understands that, in signing this Bid Form, it waives all rights to plead any misunderstanding regarding same and agrees to be bound by the provisions of said Bidding Documents and all statements made therein.

4. **BIDDER** acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into its Bid:

ADDENDUM No: _____

5. **BIDDER** accepts all terms and conditions of the *Invitation for Construction 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 **AGENCY**. **BIDDER** understands that Bid Alternates that are not accepted in an initial award shall remain open for acceptance for the entire period set above and for such longer period as requested by **AGENCY** and agreed to by **BIDDER**.

6. **BIDDER** 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, 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):

Up to three (3) Contractors will provide construction, restoration, renovations and/or repairs as directed by the SC Military Department, Office of The Adjutant General, Facilities Management Office for facilities located within the State of South Carolina. There is no minimum amount of work that will be guaranteed under this Contract. The Contract will be for a term of two (2) years. Each Contractor shall have a current General Contractors License (Building Group #4) at the time of the Bid and throughout the entire period of the Contract.

_____, which sum is hereafter called the BASE BID.
(enter BASE BID in figures only)

SE-330 Bid Form

LISTING OF PROPOSED SUBCONTRACTORS

1. A **SUBCONTRACTOR** is an entity who will perform work or render service to the prime contractor to or about the construction site. Material suppliers, manufacturers and fabricators are not **SUBCONTRACTORS** and are not to be listed.
2. Any **BIDDER** responding to an *Invitation for Construction Bids* shall list in its bid the name of only those **SUBCONTRACTOR(S)** that will perform the work so identified in the *Invitation*.
3. If **BIDDER** determines to use its own employees to perform any portion of the work listed below, and if **BIDDER** is qualified to perform such work under the terms of the Bidding Documents, **BIDDER** shall list itself in the appropriate place in its bid and not subcontract any of that work except with the approval of the Agency for good cause shown.
4. **BIDDER** hereby acknowledges and agrees that any failure by **BIDDER** to list **SUBCONTRACTORS** in accordance with the requirements of the SC Code of Laws shall render the **BID** non-responsive.
5. A **SUBCONTRACTOR** listed for a **BID ALTERNATE** may be used for all work, including the Base Bid work, if the **BID ALTERNATE** is accepted.
6. **BIDDER** hereby states its commitment to use the below-listed **SUBCONTRACTORS** in the performance of the Subcontractor Speciality work listed:

SUBCONTRACTOR SPECIALTY (COMPLETED BY A/E)	SUBCONTRACTOR'S NAME or PRIME BIDDER'S NAME (MUST BE COMPLETED BY BIDDER)	SUBCONTRACTOR'S SC LICENSE NUMBER (FOR INFORMATION)
<u>BASE BID WORK</u>		
No Subcontractor Listing	_____	_____
Required	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
<u>ALTERNATE BID WORK</u>		
<u>BID ALTERNATE NO. 1</u>		
_____	_____	_____
_____	_____	_____
<u>BID ALTERNATE NO. 2</u>		
_____	_____	_____
_____	_____	_____
<u>BID ALTERNATE NO. 3</u>		
_____	_____	_____
_____	_____	_____
<u>BID ALTERNATE NO. 4</u>		
_____	_____	_____
_____	_____	_____

SE-330 Bid Form

TIME OF CONTRACT PERFORMANCE

BIDDER hereby agrees to complete the construction work in accordance with the following schedule:

1. The **DATE OF COMMENCEMENT** shall be established in Form SE-390, *Notice to Proceed*. The BIDDER shall not incur any expense chargeable to this Project until the Contract has been executed by both the Agency and the Contractor, and a Notice to Proceed has been issued.
2. The **DATE OF SUBSTANTIAL COMPLETION**, to be documented on Form SE-550A, *Certificate of Substantial Completion*, shall be (Per DO) **CALENDAR DAYS** from the **DATE OF COMMENCEMENT** set forth in the SE-390, subject to adjustments as provided in the Contract Documents.
3. The **DATE OF FINAL COMPLETION**, to be documented on Form SE-560C, *Certificate of Final Completion*, shall be (Per DO) **CALENDAR DAYS** from the **DATE OF SUBSTANTIAL COMPLETION**, subject to adjustments as provided in the Contract Documents.

LIQUIDATED DAMAGES AND EARLY COMPLETION AWARD

1. The undersigned further agrees that from the compensation to be paid, the Agency shall retain as Step One **Liquidated Damages** the amount of Per DO 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.
2. The undersigned further agrees that from the compensation to be paid, the Agency shall retain as Step Two **Liquidated Damages** the amount of Per DO for each calendar day the actual construction time required to achieve **FINAL COMPLETION** exceeds the specified or adjusted Contract Time for **FINAL COMPLETION**, as provided in the Contract Documents.
3. The undersigned further agrees that in full and complete satisfaction for the best efforts of the undersigned to achieve **SUBSTANTIAL COMPLETION** before the date established above, the Agency shall pay the undersigned an **Early Completion Award** in the amount of \$0.00 for each calendar day the actual construction time required to achieve **SUBSTANTIAL COMPLETION** is less than the originally specified Contract Time for **SUBSTANTIAL COMPLETION**, as provided in the Contract Documents.

AGREEMENTS

By submitting this Bid, BIDDER hereby agrees to the following terms and conditions:

1. An incomplete Bid, or information not requested that is written on or attached to this Bid Form that could be considered a qualification of the Bid, may be cause for rejection of the Bid.
2. The failure of the BIDDER to indicate a price for a **BID ALTERNATE** shall render the Bid non-responsive. A **BID ALTERNATE** shall be bid by indicating either a dollar amount or the words "No Change", "Zero", or "0.00". A typed or printed "No Bid", or words of similar meaning, shall render the Bid non-responsive. BIDDER must indicate whether the amount of the **BID ALTERNATE** is an "ADD" to or a "DEDUCT" from the amount of the Base Bid. The Bid may be determined non-responsive for failure of the BIDDER to indicate the appropriate "ADD" or "DEDUCT" for each **BID ALTERNATE**, unless the adjustment is obvious to the Agency.
3. If any **BID ALTERNATES** should be accepted by the AGENCY, they shall be incorporated into the executed Contract. **BID ALTERNATES** may be accepted in any combination or order, at the sole discretion of the AGENCY.
4. The BIDDER shall list only **SUBCONTRACTORS** (as defined in the Bidding Documents) who are qualified to perform items of work as specified in the Bidding Documents or as required by any material or equipment substitutions approved at the time of bidding. No BIDDER whose Bid is accepted shall substitute another entity as **SUBCONTRACTOR** in place of the **SUBCONTRACTOR** listed in the original Bid, except for one or more of the reasons allowed by the SC Code of Laws.
5. The failure of the BIDDER to provide the name(s) of listed **SUBCONTRACTORS** in accordance with the SC Code of Laws shall render the Bid non-responsive.
6. Unless otherwise provided in the Bidding Documents, BIDDER will provide Performance and Labor and Material Payment Bonds, each in the amount equal to 100% of the Contract Award, as a condition of execution of the Contract. Failure to supply such bonds as required by the Contract Documents shall result in cancellation of the Notice of Intent to Award and forfeiture of the Bid Bond.

SE-330 Bid Form

7. **BIDDER** agrees to provide all information requested by the **AGENCY** to support the **AGENCY'S** evaluation and determination of the **BIDDER'S** responsibility, including completion of Form SE-350, *Questionnaire for Contractors*. The Questionnaire shall be completed fully and returned to the **AGENCY** within SEVEN (7) DAYS from date of receipt by the **BIDDER** by certified mail. The completed Form SE-350 must be received by the Agency no later than the close of business on the seventh day. Failure by **BIDDER** to supply requested information with respect to responsibility may be grounds for a determination of non-responsibility.

8. The **BIDDER** certifies that it will provide a "Drug-Free Workplace" as that term is defined in Section 44-107-30 of the SC Code of Laws, and shall comply with the requirements set forth in Title 44, Chapter 107.

9. At any time prior to the issuance of the Notice to Proceed for this Project, this Contract may be canceled for the convenience of the State.

10. 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.

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 Form SE-335 included in the Bidding Documents.

(Electronic Bid Bond Number)

(Signature and Title)

BIDDER'S TAXPAYER IDENTIFICATION

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER: _____

OR

SOCIAL SECURITY NUMBER: _____

CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATIONS

(Classification)

(Subclassification)

(Limitations)

(SC Contractor's License Number)

SIGNATURE

(Legal Name of Person, Firm or Corporation Submitting Bid)

(Mailing Address for the above)

BY

(Signature)

(Date)

(Title)

(Phone)



South Carolina Military Department Contract for the Indefinite Delivery of Construction Services

THIS CONTRACT, made this _____ day of _____, 20⁰⁸, by and between

AGENCY _____ and **CONTRACTOR** _____, and

SC Military Department, Office of The Adjutant General
 (Attn: TAG-DSO-FM)
 1 National Guard Road
 Columbia, SC 29201-4766

WHEREAS, the Agency requires the delivery of _____ General Construction - New, Restoration and/or Repairs
 (Type of Work for this Contract)
 construction services on an as-needed basis, hereinafter referred to as the "Services", for the following Project identified as follows: E24 - D059 - SG - _____ and _____ and
 (State Project Number) (Agency Contract Number)
 _____ Indefinite Delivery Contract - General Construction _____ ; and
 (Name)

WHEREAS, the CONTRACTOR, whose FEIN/SSN is _____ and whose SC Contractor's license is _____, is prepared and qualified to provide such Services.

NOW THEREFORE, the Agency and Contractor agree to all of the following terms and conditions set forth in this Contract.

THE EFFECTIVE DATE of this Contract shall commence as of the date written above and the term shall be for a period not to exceed two years and will end as of _____. The term of this Contract may not be extended by amendment.

THE SERVICES REQUESTED by the Agency shall be set forth in a Request for Cost Proposal for specific construction services. The Contractor agrees to accept all such requests for services issued by the Agency, unless the work requested is not within the expertise or license limitations of the Contractor; or as agreed by the Agency for just cause in the mutual interests of the Agency and Contractor.

THE SERVICES PROVIDED by the Contractor shall be set forth in the Agency's Request for Cost Proposal which, once the Contractor's cost proposal is approved by the Agency, shall be incorporated into this Contract, and all work shall be performed by the Contractor in accordance with the terms and conditions contained on Pages 2 through 10 of this Contract.

PAYMENTS TO THE CONTRACTOR for acceptable work performed shall be as follows:

THE MAXIMUM AMOUNT to be paid for all Work under the terms of this agreement is: \$750,000.00
 (Cannot exceed \$ 750,000)

THE MAXIMUM DELIVERY ORDER AMOUNT to be paid for construction services is: \$150,000.00
 (Cannot exceed \$ 150,000)

THE CONTRACTOR'S COST PROPOSALS shall be based on the following method: (choose one)

MULTIPLIER of _____ using cost guide data per: _____

UNIT PRICES as established in Attachments to this Contract and listed in Article 20.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE ENTERED INTO THIS CONTRACT ON THE DAY AND YEAR FIRST WRITTEN ABOVE.

AGENCY
 BY: _____
 (Signature of Agency Representative)
 Gary B. Grant, PE
 (Print or Type Name of Agency Representative)

CONTRACTOR
 BY: _____
 (Signature of Contractor Representative)
 (Print or Type Name of Contractor Representative)

ITS: Deputy Facility Management Officer

ITS: _____

ATTACHMENTS
 1. Attachments as identified in Article 20.

Terms and Conditions of the South Carolina Military Department Contract for the Indefinite Delivery of Construction Services

ARTICLE 1 - GENERAL

A. The Contractor agrees to provide construction services to the Agency as required by the Agency and as set forth in the individual *Requests for Proposal* that the Agency may issue from time to time during the term of this Contract.

B. Work by the Contractor shall be performed only in response to a duly authorized Delivery Order issued by the Agency.

C. The maximum amount of each Delivery Order, including amendments shall not exceed \$150,000 per project nor shall the total amount of Delivery Orders, including amendments, exceed \$750,000 during the term of this Contract.

D. The duration of this Contract shall not be extended by amendment nor renewed for an additional period. Delivery Orders authorized by the Agency within the term of the Contract may be completed by the Contractor even though the completion date may extend beyond the term of the contract.

E. This Contract does not guarantee the award of a minimum amount of work unless otherwise stated.

F. The Contractor covenants with the Agency to furnish its best skill and judgment and to cooperate with the Agency and any other contractors in furthering the interests of the Agency.

G. The Services provided pursuant to this Contract shall be performed in accordance with the applicable requirements of the *Manual for Planning and Execution of State Permanent Improvements-Part II (Manual)*.

H. The Contract Documents forming this agreement shall consist of the following: (1) Form SE-660 (this document) and any listed attachments thereto; (2) the Bidding Documents and all Addenda thereto; (3) the Contractor's completed SE-330; (4) the Contractor's individual *Cost Proposals* submitted pursuant to an authorized Delivery Order; (5) any Delivery Orders (Form SE-680) issued under this Contract and all amendments thereto (Form SE-690).

ARTICLE 2 - AUTHORIZATION OF SERVICES

A. 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 award of the Delivery Order has been authorized and fully executed by both the Agency and the Contractor.

B. The Agency will initiate a *Request for Proposal* for specific services and work products as required for the work, and will provide adequate project information as required.

C. The Contractor shall prepare a *Cost Proposal* to complete the Work as requested. The Cost Proposal will be submitted to the Agency within one (1) week of the request or as otherwise requested by the Agency in the specific *Request*.

D. The Contractor shall include in each *Cost Proposal* a schedule showing the anticipated dates for completion of various milestones of the Work.

E. The *Cost Proposal* shall be prepared according to the method described in the Contract Documents and shall be either:

1. **Multiplier** - The Contractor shall use the multiplier times the unit prices contained in the cost data guide each as listed on Page 1 of this Contract, times the number of units for the Work. The unit prices to be used from the Cost Data Guide shall include full installation, overhead & profit. No additional mark-up is to be added; or
2. **Unit Prices** - The Contractor shall use the unit prices, as awarded, 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 Contractor's price for the *Cost Proposal*.

Note: Should unit prices not be available for items of work to be included in the Delivery Order, the Contractor shall prepare a proposal including labor and material cost breakdown with overhead and profit added as follows:

a. For the Contractor or subcontractor on work performed by their own forces:

Overhead (%)	Profit (%)	Commission (%)
10	7	0

b. For the Contractor or subcontractor on work performed by its subcontractors:

Overhead (%)	Profit (%)	Commission (%)
10	0	3

c. To a first tier subcontractor on work performed by its subcontractors:

Overhead (%)	Profit (%)	Commission (%)
10	0	3

Note: No more than three levels of overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers. The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors. Changes to the Contract Sum that decrease the Contract Sum (deleted work) will include Overhead, Profit, and Commission.

F. The Agency, upon receipt will review the proposal in a timely manner and accept or reject it. Prior to issuing a Form SE-680, the Agency reserves the right to negotiate with the Contractor to revise the scope of work and costs that are believed to be in the best interest of the State.

G. Upon acceptance of a proposal the Agency will issue a Form SE-680 toward this Contract.

H. If the Contractor fails to provide a *Cost Proposal* within the required time limit, or otherwise provides a response that the Agency deems, in its sole discretion, to be unacceptable, the Agency may withdraw the Delivery Order request and use an alternative contractor to provide the construction services.

I. The Agency's approval of a Delivery Order shall be the Contractor's Notice to Proceed with the Work. The time limits stated in the Delivery Order are of the essence. By executing the Delivery Order, the Contractor confirms that the performance dates stated in the Delivery Order constitutes a reasonable period for performing the Work.

ARTICLE 3 - CONTRACTOR'S RESPONSIBILITIES

A. The Contractor shall designate one or more representatives to be assigned for the duration of the Project. These representatives shall be authorized to act on behalf of the Contractor in all matters related to the Contractor's performance under this Contract. The Contractor shall not replace a designated representative except for good cause shown.

B. The Contractor warrants to the Agency that:

1. It and its subcontractors (if any) are financially able to complete the work;
2. It will perform all obligations, furnish all plant, material, equipment, tools, transportation, supplies and labor to complete the work assigned;
3. It is authorized and licensed to do business in the State of South Carolina and the local jurisdiction in the area of the work site;
4. It is duly authorized to execute the Contract and accept Delivery Orders;

Terms and Conditions of the South Carolina Military Department Contract for the Indefinite Delivery of Construction Services

5. It possesses a high level of experience and expertise in the business administration, construction, management, and supervision of projects that may be assigned to this Contract, and will perform the work with care and diligence in a professional and workmanlike manner.

C. The Contractor shall have, at the time of execution of this Contract, all professional and business insurance, licenses and permits required to provide the required Services in the State of South Carolina and as required by this Contract.

D. The Contractor shall perform construction services as required by any Delivery Order signed by both parties.

1. The Contractor shall pay for required building permits or business license fees, labor, materials, equipment, tools, transportation, supervision, testing, etc., as required for the performance of the Work or as specified in an approved Delivery Order.

2. The Contractor shall visit the site and take measurements, observations, tests or otherwise obtain information to assist in familiarization with the work site, its conditions and limitations that would affect the performance of the Work.

3. The Contractor shall review the documents furnished with the Agency's *Request for Cost Proposal* to become familiar with the requirements of the project and understand the scope of work required. The Contractor shall have the right to rely on information contained in the Delivery Order. Such reliance requires that the Contractor shall review all information provided by the Agency, including that available by visiting the site, exercising care, skill and diligence of a contractor experienced in the work required, and shall give prompt and timely notice to the Agency of any apparent deficiencies or inconsistencies in the information furnished by the Agency or its A/E.

4. In the event of inconsistencies within or between parts of the Delivery Order or between the Delivery Order and applicable standards, codes, and ordinances, the Contractor shall: (1) provide the better quality or greater quantity of Work; or, (2) comply with the more stringent requirement; either or both in accordance with the A/E's interpretation.

E. The Contractor does not have the responsibility to determine that the design of the project is in conformance with applicable building codes and regulations, but if during the review of the Delivery Order, it is found that any apparent violations exist, it is the Contractor's responsibility to inform the A/E and the Agency of such apparent violation.

F. The Contractor is responsible for construction means, methods, techniques, procedures and safety measures in the performance of the work.

G. The Contractor shall employ only persons skilled in the work for which they are to do, employ an experienced superintendent to supervise the work, and shall be responsible for the acts or omissions of the Contractor's agents and employees or those of sub-contractors and their agents and employees acting on behalf of the Contractor.

H. The Contractor shall cooperate with and coordinate its work with the work of others.

ARTICLE 4 - AGENCY'S RESPONSIBILITIES

A. The Agency shall provide the Contractor with available information regarding the Work and work area for each Delivery Order.

B. The Agency shall designate one or more representatives with authority to act and make binding decisions on the Agency's behalf in all matters related to the Agency's duties under this Contract.

C. The Agency shall secure and pay for all design permits, assessments, and easements except as required by any Delivery Order issued under the terms of the Contract.

D. The Agency shall make timely decisions on all issues related to the Contract and shall promptly advise the Contractor of any errors or deficiencies in the Contractor's performance under this Contract.

E. The Agency shall pay the Contractor for acceptable work performed, in accordance with the provisions of this Contract.

ARTICLE 5 - A/E'S RESPONSIBILITIES

A. The term "Architect," "Architect/Engineer," or "A/E" is the entity named as such in the *Request for Cost Proposal*. The "Architect" or "A/E" may be the Agency, if so designated. In the absence of a licensed design professional, these terms mean the Agency.

B. The A/E shall represent the Agency during the construction process through final completion of the project, and as requested during the warranty period. The A/E will act on behalf of the Agency only to the extent provided in the Delivery Order or otherwise agreed by the Agency.

C. The A/E, as a representative of the Agency, shall visit the site as necessary to fulfill its obligations to the Agency for inspection services, if any, and, at a minimum, to assure conformance with the A/E's design as shown in the Delivery Order and to observe the progress and quality of the various components of the Contractor's Work. The A/E shall (1) keep the Agency informed about the progress and quality of the Work completed, (2) endeavor to guard the Agency against defects and deficiencies in the Work, and (3) determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Delivery Order.

D. The A/E will make recommendations to the Agency as to acceptance or rejection of the Work and communicate the Agency's decision to the Contractor.

E. The A/E will review and approve or reject shop drawings and samples submitted by the Contractor.

F. The A/E shall respond promptly to all requests for information or clarification from the Agency or the Contractor.

G. The A/E will make the initial interpretation and decision on matters concerning performance under, and requirements of, the Delivery Order on written request of either the Agency or Contractor. Upon receipt of such request, the A/E shall promptly notify the non-requesting party in writing of the details of such request. The A/E's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the A/E shall be furnished, then delay shall not be recognized on account of failure by the A/E to furnish such interpretations until fourteen (14) days after written request is made for them. The interpretation or decision of the A/E shall be final, subject to the dispute resolution provisions of this Contract.

H. 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.

I. The A/E will review periodic requests for payment, and approve or reject the request, in whole or in part

Terms and Conditions of the South Carolina Military Department Contract for the Indefinite Delivery of Construction Services

J. The A/E will prepare change orders or change directives as directed by the Agency.

K. If so identified in the Delivery Order, the Agency shall serve as the A/E.

ARTICLE 6 - CONSTRUCTION ADMINISTRATION

A. Shop Drawings and Samples

1. The Contractor shall submit Shop Drawings as required by the Delivery Order, consisting of drawings, diagrams, illustrations, schedules, brochures, and other data which are prepared by the Contractor, Sub-contractor, manufacturer, supplier, or distributor and that depict that portion of the work.

2. The Contractor shall review and approve Shop Drawings prior to their submission to the A/E. Such review shall be for compliance with the requirements of the Delivery Order and to ensure complete coordination of the Work. Shop drawings approved by the Contractor shall bear a stamp denoting that they have been reviewed and are "approved" or "approved as noted" or similar designation.

3. The Contractor shall submit the number of sets as specified in the Delivery Order, 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.

4. The A/E will review the shop drawings with reasonable promptness but only for conformity with the design and performance requirements as indicated in the Delivery Order.

5. The Contractor shall submit samples as required by the Delivery Order, consisting of physical examples furnished by the Contractor of sufficient size and quantity to provide an acceptable 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.

B. Materials and Workmanship

1. The Contractor shall not allow the use of any asbestos containing product, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work, even if the products are non-friable and/or contain minimal amounts of asbestos, and even though such products may still be legally installed.

2. The Contractor shall not use or allow the use of lead materials in public water applications. Lead free solder, flux and pipe must be used in all public drinking water and waste water applications. Lead free solder and flux is defined as containing less than 0.2% lead while valves, pipes and appurtenances must contain less than 8.0% lead.

3. The Contractor warrants that unless otherwise specified or permitted by the Delivery Order, all materials shall be new, in first class condition, and installed using workmanship of the highest quality in accordance with the Delivery Order.

C. Inspection and Testing of Materials

1. The Contractor shall have performed and documented all inspections and tests required by the Delivery Order.

2. The Contractor shall leave uncovered all areas of work that will be covered that are called out in the Delivery Order to be left uncovered, or the A/E requests to be left uncovered prior to being inspected. The Contractor shall give adequate notice to the A/E of the time requested for an inspection of areas to be covered.

3. If the Contractor covers areas that were to be left uncovered, or otherwise fails to have performed the required

inspections and tests, the Contractor shall cause the area to be uncovered for inspection and testing. 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.

D. Substitutions

1. The Contractor's requests for substitutions shall be submitted and negotiated prior to the execution of each Delivery Order.

2. Wherever the Delivery Order specifies a particular product, article, appliance, equipment, or material and it is designated by manufacturer and model number, it is the intent to designate a level of quality, finish, appearance, function, or other factor that was desirable to have incorporated into the design. It is not intended to limit competition. Other manufacturer's listed as 'approved equal' may be used, but the products by that manufacturer must meet or exceed 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. If the Contractor desires to substitute a product for one that is not readily available due to extenuating circumstances, a request may be submitted for review to the A/E. Along with the product information submittal, the Contractor shall list the reason(s) for requesting the substitution, and the benefit to the State for accepting the substituted product. The Agency's decision on the request is final.

4. The Contractor shall not substitute any product, article, appliance, equipment, or material that is specified without prior written approval from the A/E, which shall be granted only with the concurrence of the Agency.

E. Changes in the Work

1. The Agency may authorize changes in the scope of a Delivery Order without invalidating the Delivery Order or this Contract by issuing either a Construction Change Order (Form SE-690) or Construction Change Directive (Form SE-420). and the Contractor shall execute the changed work promptly.

2. Any changes in the work must be approved by the Agency and executed by Form SE-690 signed by the Contractor and A/E.

3. The cost of any change order shall be calculated using the same method as pricing the Delivery Order.

4. In the absence of a total agreement concerning the item(s) for a Change Order, a Construction Change Directive (Form SE-420) shall be issued and the Contractor shall proceed diligently with performance of the Delivery Order.

F. Receiving and storing materials and equipment

1. The Contractor shall have an authorized person or persons to receive all items and shall properly unload, check for completeness of shipment, and in-transit damage.

2. The Contractor shall properly handle and store materials, supplies, equipment etc. in accordance with the Delivery Order or manufacturer's printed instructions for each product.

G. Schedule and Reports

1. At the time of approval of the Delivery Order by the Agency, the Contractor shall present a construction schedule in a form satisfactory to the A/E. The schedule shall identify important tasks and identify the critical path.

2. Submit an up-dated progress schedule with each monthly request for payment showing scheduled dates and actual completion dates. If the Work falls behind schedule, the Contractor shall present a plan for completion of the work by

Terms and Conditions of the South Carolina Military Department Contract for the Indefinite Delivery of Construction Services

the date for completion.

H. Time for Completion

1. The Time for Completion will be identified in each Delivery Order, and will be the amount of time agreed to by the Agency and the contractor as required for completion of the work of that Delivery Order.

2. Requests for any extension of time shall be made monthly with the application for payment. Delays of the work due to circumstances beyond the control of the contractor shall be adequately documented and submitted to the Agency with any request for an extension of the Time for Completion.

3. The time for completion shown in the Delivery Order shall include five (5) calendar days for delays due to inclement weather per calendar month. Delays due to weather beyond the five days may be requested as a time extension to the time for completion. The Contractor shall submit job site weather data supporting the claim for an extension of time;

4. The A/E and Agency will promptly review each request for time extension. The A/E shall make a recommendation and the Agency shall approve or reject the request, and so inform the Contractor. Changes in Contract Time shall be documented on Form SE-690.

5. Should completion of the Delivery Order extend past the original or amended Delivery Order completion date, the Agency will calculate liquidated damages in the amount listed in the Delivery Order and reduce the Contractor's final payment by that amount.

I. Guarantee

1. The Contractor shall remedy and make good all defects in material and workmanship at no additional cost to the Agency and pay for any damage to other work or property resulting from such defects for a period of one year from the date of Substantial Completion excepting defects that are due to misuse or abuse by the Agency.

2. The issuance of a Certificate of Substantial Completion does not relieve the contractor from liability for defective workmanship or materials.

3. Where guarantees and/or warranties are required in the technical sections of the specifications, or as noted on the drawings, exceeding the one-year guarantee period, the extended warranty period will govern.

4. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations the Contractor might have under the contract documents.

J. Use of the Site

1. The contractor shall confine its operations to areas permitted by laws and ordinances, and as defined in the Delivery Order. The site must be maintained in a reasonably clean condition, free of trash and debris. The Contractor shall, on a regular basis, remove from the site all trash, debris, tools and equipment no longer needed for the work.

2. The Contractor shall provide access to the work in progress for representatives of the Agency, A/E and for all authorities having jurisdiction over the Work.

ARTICLE 7 - PAYMENTS

A. Payments by the Agency to the Contractor for acceptable work performed shall be made in accordance with Title 29, Chapter 6 of the SC Code of Laws, as amended.

B. Payments by the Contractor to Subcontractors for acceptable work performed shall be made in accordance with Title 29, Chapter 6 of the SC Code of Laws, as amended.

C. Payments by the Contractor and Subcontractors to laborers and others shall be made in accordance with Title 29, Chapter 7 of the SC Code of Laws, as amended.

D. If the Contractor intends to request progress payments, the Contractor shall submit to the A/E for its approval, a schedule of values showing the cost breakdown of the various divisions of work. The divisions of work shall be formatted using Construction Specifications Institute (CSI) format. The total of the schedule of values shall be the amount of the Delivery Order and any amendments.

E. Any schedule of values that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected.

F. The Contractor shall submit all applications for payment to the A/E. The A/E shall review the application to determine the amount due the Contractor, based on the approved schedule of value for the work listed in the application for payment and acceptably performed, and forward its certification to the Agency within seven days of receipt.

G. Applications for payment may include materials suitably stored on site for use in the Work. Materials stored off site may be approved for payment providing the Contractor submits:

1. Documentation showing the location of the material;
2. Proof of purchase & delivery;
3. Certificate of insurance for the material with adequate coverage showing the Agency as the certificate holder;
4. The material is stored in a bonded warehouse, segregated and posted with a sign designating ownership by the Agency.

H. The Agency shall retain funds from the applications for payment in the amount of 5% of the total requested. Retained funds shall be held until final completion of the Delivery Order.

I. When the Contractor has fully performed the work of the Delivery Order and has been granted a Certificate of Final Completion, the Contractor may submit its application for final payment and release of retained funds to the A/E. The request shall be accompanied by the Consent of Surety to Final Payment (for bonded Delivery Orders), and Releases of Liens from all sub-contractors. If the work is completed to the satisfaction of the A/E, the A/E shall certify the application and the Agency shall make final payment.

ARTICLE 8 - CLAIMS

A. Each party may assert a Claim requesting an adjustment of the Contract or Delivery Order terms, an adjustment in the Delivery Order sum, a change in the Delivery Order time for completion, or other relief with respect to the terms of the Contract or Delivery Order.

B. Claims under this Contract shall be submitted using Form SE-470, "Notice of Claim". A voucher, invoice, payment application or other routine request for payment that is not in dispute when submitted is not a Claim under this definition. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

C. Claims arising prior to the date final payment is due must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. By failing to give written notice of a Claim within the time required by this paragraph, a party expressly waives its claim.

Terms and Conditions of the South Carolina Military Department Contract for the Indefinite Delivery of Construction Services

D. Pending a resolution of the Claim, including any dispute resolution under this Contract, the Contractor shall proceed to perform as required by the Delivery Order and the Agency shall continue to make payments in accordance with this Contract.

ARTICLE 9 - DISPUTE RESOLUTION

A. The Contractor consents to be governed by §11-35-4230 of the SC Code of Laws, as amended, and agrees that §11-35-4230 applies to and governs the Contract. The Contractor waives any objection it may have now or hereafter to the administrative process required by §11-35-4230. To the extent that §11-35-4230, by its own terms, does not govern a claim or controversy arising out of or relating to the Contract, the Contractor agrees that any suit, action or proceeding arising out of or relating to the Contract shall be instituted and maintained only in a State or Federal court located in the County in which the Agency maintains its principle place of business, in the State of South Carolina.

B. The Contractor agrees that any act by the Agency 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 in this paragraph, the phrase "the State" includes any governmental entity transacting business with the Contractor pursuant to the Contract and the South Carolina Budget & Control Board.

ARTICLE 10 - SUSPENSION OR TERMINATION BY AGENCY

A. The Agency may direct the Contractor to suspend the Contractor's performance, in whole or in part, with or without cause, for such period as determined by the Agency at any time and without prior notice to the Contractor.

B. The Delivery Order Sum will be adjusted for increases in cost to the Contractor due to the delay or interruption except that no increase will be granted for delays or interruptions that are, or would have been, the responsibility of the Contractor, or an equitable adjustment is covered under other provisions of the contract.

C. The Agency may terminate this Contract or any Delivery Order under this Contract, in whole or in part, for the convenience of the State with not less than seven (7) days written notice to the Contractor. The Contractor shall be paid for all services acceptably performed up to the date of termination, and project closure costs as authorized by the Agency.

D. The Agency may terminate the Contract for failure of the Contractor to commence the Work of an approved Delivery Order within seven (7) days of receipt of the approved Delivery Order unless otherwise agreed upon by the Agency.

E. If either party fails to substantially perform according to the terms of this Contract, the other party may terminate this Contract upon not less than seven (7) days' written notice. The notice of termination shall set forth with specificity the grounds for termination and may, at the sole option of the terminating party, give the other party a stated period of time in which it may cure the alleged breach.

ARTICLE 11 - SUSPENSION OR TERMINATION BY CONTRACTOR

A. The Contractor may suspend its performance under this Contract only if the Agency fails to make payments of undisputed amounts as required by the terms of this Contract.

Prior to the suspension of performance, the Contractor shall give written notice to the Agency, and shall allow the Agency no fewer than twenty-one (21) calendar days to make payment, otherwise the suspension may take effect without further notice by the Contractor.

B. The Contractor may terminate the Contract, or Delivery Order, upon seven (7) days' written notice to the Agency, 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 sixty (60) consecutive calendar days due to a court order or other public authority having jurisdiction; or a National emergency which requires the work to be stopped.

ARTICLE 12 - PROTECTION OF PERSONS AND PROPERTY

A. The Contractor is responsible for job-site safety for the protection of persons and property. The Contractor shall comply with all applicable laws, rules and regulations regarding safety including but not limited to Occupational Safety and Health Standards published by Occupational Safety and Health Administration; and U.S. Department of Labor publications or other jurisdictions having authority over the work.

B. For the duration of the project, the Contractor is to provide and maintain safety equipment as required for the protection of persons and property including but not limited to warning signs; lights; signal devices; barricades; guard rails; fences; and other devices intended for the safety of persons and protection of property.

C. If during the course of executing the work, the Contractor encounters material believed to be hazardous, including but not limited to, asbestos or polychlorinated biphenyl (PCB), and that the Contractor has reasonable cause to believe creates a danger of bodily injury or death to persons, or serious losses to real or personal property, then the Contractor shall immediately stop work in the affected area and report the conditions to the Agency and the A/E in writing. Except by written agreement of the Agency and contractor the contractor shall not resume work until the hazardous material has been rendered harmless.

D. The Agency and Contractor hereby agree that this Paragraph shall apply only to hazardous, toxic or radioactive materials or substances subject to the regulations of agencies having jurisdiction, such as, but not limited to, the S.C. Department of Health and Environmental Control (SCDHEC), the U. S. Environmental Protection Agency (USEPA) and the U.S. Nuclear Regulatory Commission (USNRC).

E. The Work in the affected area shall be resumed immediately following the occurrence of any of the following events: (a) the Agency causes remedial work to be performed that results in the absence of materials or substances; or (b) the Agency and the Contractor, by written agreement, decide to resume performance of the Work; or (c) the Work may safely and lawfully proceed, as determined by an appropriate governmental authority or as evidenced by a written report to both the Agency and the Contractor, which is prepared by an environmental engineer reasonably satisfactory to both the Agency and the Contractor.

F. For the purposes of this Contract, the term "rendered harmless" shall be interpreted to mean that measured levels of verified hazardous, toxic or radioactive materials or substances are less than the applicable standards established by authorities having jurisdiction. In no event, however, shall

**Terms and Conditions of the South Carolina Military Department Contract for the
Indefinite Delivery of Construction Services**

the Agency have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible, unless such materials or substances were expressly required by the Delivery Order. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or radioactive, or made up of any items that are hazardous, toxic, or radioactive.

ARTICLE 13 - CONTRACTOR'S INSURANCE AND BONDS

A. The Contractor shall purchase and maintain insurance to protect against claims that may arise out of the Contractor's operations under the work of this Contract. The limits shall be for not less than the limits set forth in this Article, shall be written on an occurrence basis and shall be in force for the duration of the Contract.

B. The Contractor's Liability Insurance shall include all major divisions of coverage and is to be based on a Commercial basis including the following:

1. Premises - Operations.
2. Independent Contractor's Protective.
3. Products and Completed Operations.
4. Personal and Advertising Injury.
5. Contractual, including specified provision for Contractor's obligations.
6. Broad Form Property Damage, including Completed Operations;
7. Owned, Non-owned and Hired Vehicles.

C. The Insurance required by this Article shall be written for not less than the following limits or greater if required by law or other provisions in the contract:

1. **Commercial General Liability:**
 - a. General Aggregate (per project) \$ 1,000,000
 - b. Products/Completed Operations \$ 1,000,000
 - c. Personal and Advertising Injury \$ 1,000,000
 - d. Each Occurrence \$ 1,000,000
 - e. Fire Damage \$ 50,000
 - f. Medical Expense (Any one person) \$ 5,000
2. **Business Auto Liability (including all owned, non-owned, and hired vehicles):**
 - a. Combined Single Limit \$ 1,500,000

-OR-

 - b. Bodily Injury & Property Damage (each) \$ 750,000
3. **Workers Compensation**
 - a. State Statutory
 - b. Employer's Liability \$ 100,000 Per Accident
\$ 500,000 Disease, Policy Limit
\$ 100,000 Disease, Each Employee

D. The aggregate Limits of the Contractor's Insurance shall apply, in total for each Delivery Order assigned to this Contract. This shall be indicated on the Certificate of Insurance or an attached policy amendment.

E. The Agency shall be listed as the certificate holder of the Contractor's Liability Insurance.

F. Certificates of Insurance shall be in the form of the latest edition of the ACORD 25S and shall be filed with the Agency prior to commencement of the Work. In addition to Certificates of Insurance, the Contractor shall supply a written endorsement to the Contractor's general liability insurance policy that names the Agency as an additional insured. The endorsement shall provide that the Contractor's liability insurance policy shall be primary, and that any liability

insurance of the Agency shall be secondary and noncontributory.

G. The Aggregate Limits of Insurance required by Subparagraphs 13.B and 13.C shall apply, in total, to this Contract only. This shall be indicated on the insurance certificate or an attached policy amendment.

1. The insurance policies and Certificates of Insurance required by this Contract shall contain a provision that no material alteration, cancellation, nonrenewal, or expiration of the coverage contained in such policy or evidenced by such Certificates of Insurance shall have effect unless the Agency has been given at least thirty (30) days' prior written notice. The Contractor shall provide a minimum of thirty (30) days written notice to the Agency of any proposed reduction of coverage limits, including every coverage limit identified in this Article, or any substitution of insurance carriers.

2. In no event shall any failure of the Agency to receive certified copies or certificates of policies required under this Article or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Agency of the Contractor's obligations to obtain insurance pursuant to this Article. The obligation to procure and maintain any insurance required by this Article is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.

H. Prior to beginning work on a Delivery Order, the Contractor shall deliver to the Agency Form SE-355, Performance Bond and Form SE-357 Labor & Material Payment Bond if requested by the Agency. Failure to provide the Bonds may indicate that the Contractor is in material breach of its responsibilities under the Contract.

1. A separate Bond shall be provided for each separate Delivery Order, and shall be provided for all Delivery Orders exceeding \$50,000 and for lesser amounts requested by the Agency. The Contractor shall provide Performance and Labor and Material Payment Bonds, each in the amount of 100% of the amount of the Delivery Order for each project to be done under the terms of this Contract.

2. The Surety 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". In addition, the Surety shall have a minimum "Best Financial Strength Category" of "Class V" and in no case less than five (5) times the Delivery Order amount. The Performance and Labor and Material Payment Bonds shall:

- a. be issued by a surety company licensed to do business in South Carolina; and,
- b. be accompanied by a current power of attorney and certified by the attorney-in-fact who executes the bond on the behalf of the surety company; and,
- c. 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; and,
- d. display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond stating that:

(1) The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either

Terms and Conditions of the South Carolina Military Department Contract for the Indefinite Delivery of Construction Services

the Agency or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.

(2) The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Agency.

3. Notwithstanding the foregoing, any bonds required by this Contract shall meet the requirements of the SC Code of Laws, as amended.

4. The Contractor shall keep the Surety informed of the progress of the Work, and, where necessary, obtain the Surety's consent to, or waiver of:

- a. notice of changes in the Work;
- b. request for reduction or release of retention;
- c. request for final payment; and
- d. any other item required by the Surety.

The Agency may, in the Agency's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Agency's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

ARTICLE 14 - AGENCY PROPERTY INSURANCE

A. Prior to execution of each Delivery Order, the Agency shall contact the State Insurance Reserve Fund to establish the insurance requirements for the Delivery Order work. When Agency Property Insurance is required, the insurance shall be written using Builders Risk coverage form.

B. If required by the Work of a Delivery Order, the Agency shall purchase and maintain property insurance in the amount of the initial Delivery Order Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis. Such property insurance shall be maintained until final payment has been made, or until no person or entity other than the Agency has an insurable interest in the property required by this Article to be covered, whichever is earlier. This insurance shall only cover the work owned by the Agency at the time of loss.

C. Property Insurance shall be written using a 'Builders Risk Coverage Form' with the following attached forms and endorsements:

1. Causes of Loss - Special Form; (Risks of Direct Physical Loss unless the loss is excluded or limited by the Form)
2. Causes of Loss - Earthquake Form; and
3. Flood Insurance.

D. Covered Property is the Building Under Construction described in the Policy Declarations owned by the Agency at the time of loss and includes:

1. Foundations;
2. If intended to become a permanent part of the building or structure described in the Declarations, the following property located in or on the building or structure or within 100 feet of its premises:
 - a. Fixtures, machinery and equipment used to service the building; and
 - b. Building materials and supplies used for construction;
 - c. If not covered by other insurance, temporary structures built or assembled on site, including cribbing, scaffolding and construction forms.

E. Replacement of insured damaged work shall be covered by an appropriate Change Order. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require

Subcontractors to make payments to their Sub-subcontractors in similar manner.

F. The Agency and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

G. The Contractor shall provide adequate insurance to protect the interests of the Contractor, Subcontractor, and Sub-subcontractor in the work.

H. The Contractor shall be responsible for the deductible in the Agency's policy. The policy is written with a deductible of \$250 for each occurrence.

ARTICLE 15 - CORRECTION OF WORK

A. The Contractor shall promptly and with due diligence, correct Work rejected by the A/E or the Agency for failure to conform to the requirements of the Delivery Order, whether such defective work is observed before or after Final Completion. The Contractor shall pay for correcting the deficient work including additional testing and inspections and any compensation for A/E services and expenses involved.

B. If the Contractor fails to carry out the work in accordance with the contract documents, and fails within a seven (7) day period after receipt of notice from the Agency to commence and continue correction of such default or neglect with diligence and promptness, the Agency may, without prejudice to other remedies they may have, proceed to correct such deficiencies. In such case an appropriate Change Directive shall be issued deducting from payments to the Contractor the reasonable cost of correcting such deficiencies including the Agency's expenses and compensation to the A/E if necessary. In the event the deficiency is significant, and could pose a danger or create additional expense if not corrected immediately, the Agency may issue a written order to stop work on the project or portion thereof until the reason for the stoppage has been remedied.

C. The Contractor and the Surety remain liable for any excess cost or damages resulting from actions set forth in this Article.

D. If the Agency so chooses, work that is not in conformance with the Delivery Order may be accepted in lieu of the Contractor removing and correcting the deficient work. Such acceptance of deficient work shall not include work that is in violation of any code requirements. An appropriate adjustment, as recommended by the A/E and agreeable to the Agency, shall be made to the Delivery Order Sum. Such modification to the Delivery Order Sum shall be made by Change Directive.

ARTICLE 16 - CONSTRUCTION BY AGENCY

A. The Agency reserves the right to 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.

B. The Contractor agrees to allow access to the site by the Agency's work force or separate contractor(s), and agrees to assist in coordinating the progress of the work with the Agency.

C. The Agency shall have the responsibility to coordinate the activities of the various contractors working at the project location.

**Terms and Conditions of the South Carolina Military Department Contract for the
Indefinite Delivery of Construction Services**

ARTICLE 17 - SUBCONTRACTORS

If the Contractor engages subcontractors to provide work on a Delivery Order, then the Contractor shall include, or cause to be included, in the agreement with those entities, all provisions contained in this Contract and the Delivery Order. Sub-contractors and sub-subcontractors shall be bound by the same provisions as the Contractor and shall preserve and protect the rights of the Agency.

ARTICLE 18 - COMPLETION AND CLOSEOUT

A. The Contractor shall have completed the unfinished and defective work listed in the "punch list" and notify the A/E of its completion. The A/E will schedule a Final Inspection and require 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

B. Failure of the Contractor to achieve completion within the allowed time shall entitle the Agency to consider the contractor in breach of the Contract.

C. If more than one Final Inspection is required, the Contractor shall reimburse the Agency for all costs associated with the re-inspection.

D. Final Payment shall not be due nor shall retained funds be released until the Contractor submits the following:

1. Affidavit of Payment of Debts and Claims;
2. Consent of Surety to final payment

ARTICLE 19 - MISCELLANEOUS PROVISIONS

A. Year 2000 Compliance Certification

The Contractor represents and warrants that the construction services and deliverables including, but not limited to, systems, products, equipment, components and materials, which are provided, sold, leased or licensed to the State of South Carolina as a part of this Work are "Year 2000 Compliant". For the purposes of the Contract, a service or deliverable is "Year 2000 Compliant" if:

1. it will continue to function before, at and after the calendar year 2000 AD, with full ability to accurately and unambiguously process, display, compare, calculate, manipulate and otherwise use date information; and

2. the service or deliverable will operate during each time period without error relating to date information, specifically including any error relating to, or the product of, date information which represents or references centuries or more than one century.

3. This warranty and representation supersedes all warranty disclaimers and limitations and all limitations provided by or through the Contractor.

4. The Contractor shall include the Year 2000 Compliance Certification as set forth above in any and all of its subcontracts, purchase orders or contractual instruments for services or deliverables to be provided for this Work.

B. 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.

C. Cancellation After Award

Pursuant to §11-35-1520 of the SC Code of Laws, as amended, and South Carolina Regulation 19-445.2085, this Contract or any Delivery Order may be canceled after award, but prior to issuance of the Notice to Proceed. In such event, the Contractor shall recover, as its sole remedy, its reasonable bid preparation costs.

D. The Contractor and Agency each bind themselves, their partners, directors, officers, successors, executors, administrators, assigns and legal representatives in respect to all provision of this Contract. Neither party shall assign, sublet or transfer their interest in this Contract without the written consent of the other party.

E. This Contract represents the entire and integrated agreement between the Agency and Contractor. It supersedes any and all prior and contemporaneous communications, representations and agreements, whether written or oral relating to the subject matter of this Contract.

F. Nothing in this Contract shall be construed to give any rights, contractual relationship or benefit to a third party against either the Agency or the Contractor.

G. Nothing in this Contract shall prevent the Contractor from employing any independent consultant, associate, or sub-contractor to assist in the performance of the Services.

H. Unless otherwise included in the Contract, nothing shall require the Contractor to discover, handle, remove, or dispose of any hazardous or toxic materials in any form at the project site.

I. Retention and Audit of Records

The Contractor and all subcontractors shall comply with all applicable obligations of §11-35-2220 of the SC Code of Laws, as amended. Accordingly, the Agency shall be entitled, at reasonable times and places, to audit the books and records of both the Contractor and any subcontractor who has submitted cost or pricing data pursuant to either this Contract or to §11-35-1830.

ARTICLE 20 - GOVERNING LAW

A. This Contract shall comply with South Carolina Law §11-35-3310 and related Statutes.

B. As required by §10-1-180 of the SC Code of Laws, as amended, the Office of State Engineer shall determine the enforcement and interpretation of all the applicable codes and referenced standards on state buildings.

C. Contractor shall refer any questions, comments or directives from local officials to the Agency and the Office of State Engineer for resolution.



SE-355 Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS THAT

(Insert full name or legal title and address of Contractor)

hereinafter referred to as "Contractor," and

(Insert full name and address of principal place of business of Surety)

a corporation duly organized and existing under the laws of the State of _____, with its principal office in the City of _____, and authorized to transact business in this State, hereinafter called the "Surety", are jointly and severally held and firmly bound unto

SC Military Department, Office of The Adjutant General, Facilities Management Office, 1 National Guard Rd., Columbia, SC 29201

(Insert full name and address of Agency)

or its successors or assigns, hereinafter referred to as "Agency", to which payment to be well and truly made, the sum of \$ _____, being the sum of the Bond, 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

(Insert Project Name and Number and Brief Description of Awarded Work, as found on the SE-330, Bid Form)

in accordance with Drawings and Specifications prepared by _____ per Delivery Order

(Insert full name and address of A/E)

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 conditions stated on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

DATED this _____ day of _____, _____ **BOND NUMBER** _____
(shall be no earlier than Date of Contract)

CONTRACTOR

SURETY

(Contractor's Name)

(Surety's Name)

BY: _____
(Signature and Title)

BY: _____
(Signature and Title)

ATTEST: _____
(Signature and Title)

ATTEST: _____
(Signature and Title)

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 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-355 Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS THAT

(Insert full name or legal title and address of Contractor)

hereinafter referred to as "Contractor," and

(Insert full name and address of principal place of business of Surety)

a corporation duly organized and existing under the laws of the State of _____, with its principal office in the City of _____, and authorized to transact business in this State, hereinafter called the "Surety", are jointly and severally held and firmly bound unto

SC Military Department, Office of The Adjutant General, Facilities Management Office, 1 National Guard Rd., Columbia, SC 29201

(Insert full name and address of Agency)

or its successors or assigns, hereinafter referred to as "Agency", to which payment to be well and truly made, the sum of \$ _____, being the sum of the Bond, 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

(Insert Project Name and Number and Brief Description of Awarded Work, as found on the SE-330, Bid Form)

in accordance with Drawings and Specifications prepared by _____ per Delivery Order

(Insert full name and address of A/E)

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 conditions stated on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

DATED this _____ day of _____, _____ **BOND NUMBER** _____

(shall be no earlier than Date of Contract)

CONTRACTOR

SURETY

(Contractor's Name)

(Surety's Name)

BY: _____

BY: _____

(Signature and Title)

(Signature and Title)

ATTEST: _____

ATTEST: _____

(Signature and Title)

(Signature and Title)

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 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 and Material Payment Bond

KNOW ALL PERSONS BY THESE PRESENTS THAT

(Insert full name or legal title and address of Contractor)

hereinafter referred to as "Contractor," and

(Insert full name and address of principal place of business of Surety)

a corporation duly organized and existing under the laws of the State of _____, with its principal office in the City of _____, and authorized to transact business in this State, hereinafter called the "Surety", are jointly and severally held and firmly bound unto

(Insert full name and address of Agency)

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

(Insert Project Name and Number and Brief Description of Awarded Work, as found on the SE-330, Bid Form)

in accordance with Drawings and Specifications prepared by _____ per Delivery Order

(Insert full name and address of A/E)

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 _____, _____ **BOND NUMBER** _____
(shall be no earlier than Date of Contract)

CONTRACTOR

SURETY

(Contractor's Name)

(Surety's Name)

BY: _____
(Signature and Title)

BY: _____
(Signature and Title)

ATTEST: _____
(Signature and Title)

ATTEST: _____
(Signature and Title)

Labor and 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 §11-35-3020(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 a bonded Contractor or its Subcontractors for the work specified in the Contract, in respect of which a payment bond is furnished, and who has not been paid in full therefore before the expiration of a period of ninety (90) days after the day 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 bonded 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. The obligee named in the bond need not be joined as a party in any such 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 forty-five (45) 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.

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 SC 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 a bonded contractor or subcontractor, but no contractual relationship expressed or implied with the contractor or subcontractor furnishing such payment bond.

13.3 Contract: The agreement between the Agency and the Contractor identified on the signature page, including all Contract Documents and changes thereto.



SE-680 Construction Services Delivery Order

AGENCY

CONTRACTOR

SC Military Department, TAG-FMO
1 National Guard Road
Columbia, SC 29201

PROJECT NAME: _____

E24 - D059 -SG -
(State Project Number)

(Agency IDC Contract Number)

(Agency Delivery Order Number)

COST AND SCHEDULE INFORMATION

	<u>DELIVERY ORDER</u>	<u>CONTRACT</u>
Maximum Total Amount, this IDC:	N/A	\$750,000.00
Maximum Total Amount, Delivery Order:	N/A	\$150,000.00
Amount, this Delivery Order:	\$0.00	N/A
Total Amount, previous Delivery Orders:	N/A	\$0.00
Total Amount, all Delivery Orders <i>(including current Order)</i> :		\$0.00
Balance Remaining for this IDC:	N/A	\$0.00

(Other Agency Information)

DESCRIPTION OF DELIVERY ORDER SCOPE: *(attach Contractor's proposal)*

LIST OF DELIVERY ORDER DOCUMENTS: *(refer to attachments as necessary)*

SCHEDULE

Date of Commencement

Days Allowed

Date of Substantial Completion

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, and to the Contractor's Cost Proposal dated the _____ day of _____, 20____, and this Delivery Order shall be assigned to the Indefinite Delivery Contract identified above.

NOTICE TO PROCEED is hereby given on this _____ 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. In this event, the Agency may withdraw this Delivery Order and terminate the Contract in accordance with the Contract Documents.

AGENCY

CONTRACTOR

BY: _____
(Signature of Agency Representative)

(Print or Type Name of Agency Representative)

BY: _____
(Signature of Contractor Representative)

(Print or Type Name of Contractor Representative)

ITS: _____

ITS: _____

COMPLETION CERTIFICATION BY AGENCY:

Actual Completion Date: _____

Liquidated Damages Assessed: _____

Date: _____

(Signature of Agency Representative)

(Title)



SE-690 Construction Services Delivery Order Modification

AGENCY

CONTRACTOR

SC Military Department, TAG-FMO
1 National Guard Road
Columbia, SC 29201

PROJECT NAME: _____

E24 - D059 -SG -

(State Project Number)

(Agency IDC Contract Number)

(Agency Delivery Order Number)

Modification
Number: _____

COST AND SCHEDULE INFORMATION

	<u>DELIVERY ORDER</u>	<u>CONTRACT</u>
Maximum Total Amount, this IDC:	N/A	_____
Maximum Total Amount, Delivery Order:	N/A	_____
Current Amount, this Delivery Order:	_____	N/A
Additional Amount, this Modification:	_____	N/A
Adjusted Amount, this Delivery Order:	_____	N/A
Total Authorized to date, all other Delivery Orders:	_____	_____
Total Authorized to date: (including this Modification)	_____	_____
Balance Remaining for this IDC:	N/A	_____

(Other Agency Information)

DESCRIPTION OF MODIFICATION SCOPE: (attach Contractor's proposal)

LIST OF MODIFICATION DOCUMENTS: (refer to attachments as necessary)

SCHEDULE

Date of Commencement

Initial Days Allowed

Additional Days Allowed

Revised Date of Sub. Comp.

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, and to the Contractor's Cost Proposal dated the _____ day of _____, 20____, and this Delivery Order Modification shall be assigned to the Indefinite Delivery Contract identified above.

AGENCY

CONTRACTOR

BY: _____
(Signature of Agency Representative)

BY: _____
(Signature of Contractor Representative)

(Print or Type Name of Agency Representative)

(Print or Type Name of Contractor Representative)

ITS: _____

ITS: _____

ADDENDUM No. 1

DATE: 21 March 08

TOPIC: Contractor Bid List

The following list identifies those companies that attended the mandatory pre-bid meeting, and thus, are allowed to submit bids.

Attendants:

Company:

Rikard Enterprises, LLC
Mr. Jeff Rikard
Preferred Construction Co., Inc.
Mr. Chris Cole
Summerfield Associates
Mr. Vernon Ott
Tyler Construction Group
Mr. Jimmy Butler
Boykin Contracting, Inc.
Mr. Tom Brock
Monteray Construction Co., Inc.
Ms, Sandi Brazell
Southeast Construction Co.
Mr. Monte Lemmon
MAR Construction Co.
Mr. Robert Laws
Complete Building Corporation

Carmac Construction Services

International Construction Services, Inc.

M.S.I. Construction
Mr. Cesar Palacio
First Class Construction
Mr. Mark White

Address:

3079 Windmill Road
Leesville, SC 29070
PO Box 3426
Columbia, SC 29230
PO Box 5815
West Columbia, SC 29171
PO Box 25037
Columbia, SC 29224
167 Lott Court
West Columbia, SC 29169
8130 Garners Ferry Road
Columbia, SC 29209
8130 Garners Ferry Road
Columbia, SC 29209
141 Riverchase Way
Lexington, SC 29072
1525 Ashley River Road
Charleston, SC 29407
921 True Street
Columbia, SC 29209
4205 Hardscrabble Road
Columbia, SC 29223
745 Greenwood Road
West Columbia, SC 29169
133 Vera Road
Lexington, SC 29073

Please review the attached listing and advise immediately of any corrections that need to be made.

As additional items discussed during the Pre-Bid Meeting, all contractors should take note of the following;

- The bid closing date is 3 Apr, 2008 at 3:00 pm. The bid opening will occur in the 1st Floor Conference Room, SCMD-TAG.
- The Bid Bond (SE-335) should be in the amount of \$ 7,500.00.
- Please provide written questions by 27 March 2008 at 3:00 pm
- Drawings furnished at the Pre-Bid Conference, Project E24-N196-SG, Toilet/Break Room Renovations, USPFO Warehouse, dated 8/1/04, Section A101 R1, A102, M101/201, P101/201 & E1/2, identifies work associated with the **RESTROOM SECTION ONLY**. Please include that cost as your Base Bid.

As a reminder, all contractor names on bids must be exactly as indicated on the above list. And, only contractors attending the Pre-Bid Meeting will be allowed to bid this project. Should any corrections be required, please contact me immediately at 803/806-4305 or via fax at 803/806-4329.

As always, please reflect the receipt of all Addenda on the Bid Form (SE-330).



Michael J. Young
Project Manager
TAG-FMO

ADDENDUM No. 2

DATE: 27 March 08

**TOPIC: Contractor's Questions/SE-335, Bid Bond,
Specifications & Revised Sheet A101-R1**

This addendum addresses questions concerning Project E24-N196-SG, Toilet/Break Room Renovations, USPFO Warehouse.

- Corrected SE-335 Bid Bond
- Project Specifications provided to answer questions about metal lockers, VCT, porcelain tile & solid Phenolic Toilet Partitions.
- Updated Sheet A101-R1 to remove pipe support.

As always, please reflect the receipt of all Addenda on the Bid Form (SE-330).

Should you have any further questions, please contact me immediately at 803/806-4305 or via fax at 803/806-4329.



Michael J. Young
Project Manager
TAG-FMO



SE-335 Bid Bond

KNOW ALL PERSONS BY THESE PRESENTS THAT

(Insert full name and address or legal title of Bidder)
hereinafter referred to as "Principal," and

(Insert full name and address of principal place of business of Surety)
a corporation duly organized and existing under the laws of the State of _____, with its principal office in the City of _____, and authorized to transact business in this State, hereinafter called the "Surety", are jointly and severally held and firmly bound unto
South Carolina Military Department, Office of the Adjutant General, 1 National Guard Road, Columbia, SC 29201

(Insert full name of Agency)
hereinafter referred to as "Obligee", the sum of \$ _____ \$7,500.00 _____, being the sum of the Bond to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted to Obligee the accompanying bid incorporated by reference herein, dated as shown, to enter into a contract in writing for
E24-D059-SG - Indefinite Delivery Contract-General Construction

(Insert the State Project Number and Name as found on the SE-330, Bid Form)

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that default of Principal shall occur upon the failure of the Principal to deliver, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Obligee), the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents. This obligation shall be null and void if the Obligee shall accept Principal's Bid and Principal delivers, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Obligee), the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents; or all Bids are rejected by Obligee; or Obligee fails to issue a Notice of Intended Award to Principal within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Principal). Payment under this Bond shall be due and payable in full upon default of Principal and within 30 calendar days after receipt by Principal and Surety of written notice of default from Obligee, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue the Notice of Intended Award agreed to in writing by Obligee and Principal. 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 Bidding Documents and the laws of the State of South Carolina. Surety shall cause to be attached to the Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

IN WITNESS WHEREOF, Surety and Principal, intending to be legally bound hereby, subject to the terms stated above, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent or representative.

DATED this _____ day of _____, _____ BOND NUMBER _____

PRINCIPAL

(Principal's Name)
BY: _____
(Signature and Title)
ATTEST: _____
(Signature and Title)

SURETY

(Surety's Name)
BY: _____
(Signature and Title)
(Attach Power of Attorney)
ATTEST: _____
(Signature and Title)

Certificate of Independent Price Determination

IMPORTANT: This Certification Concerns a Matter Within the Jurisdiction of an Agency of the State of South Carolina and the Making of a False, Misleading, or Incomplete Certification May Render the Maker Subject to Prosecution Under the South Carolina Code of Laws, Annotated, § 16-9-10 (1976) and other applicable laws.

(a) 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—

- (i) Those prices;
- (ii) The intention to submit an offer; or
- (iii) 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 bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(2)(i) Has been authorized, in writing, to act as agent for the following 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 provision _____ [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; 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 provision.

(c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

IMPORTANT: This Certification Concerns a Matter Within the Jurisdiction of an Agency of the State of South Carolina and the Making of a False, Misleading, or Incomplete Certification May Render the Maker Subject to Prosecution Under the South Carolina Code of Laws, Annotated, § 16-9-10 (1976) and other applicable laws.



SE-330
Bid Form

07/01 Editio

EXH. E

Bids shall be submitted only on SE-330

BID SUBMITTED BY: MONTERAY CONSTRUCTION CO., INC.
(Bidder's Name)

BID SUBMITTED TO: South Carolina Military Department, Office of The Adjutant General, Facilities Management Office
(Agency Name)

FOR PROJECT: E24 - D059 - SG - Indefinite Delivery Contract - General Construction
(Number) (Name)

OFFER

1. In response to the Form SE-310, *Invitation for Construction Bids*, 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 **AGENCY** in the form 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 Section 11-32-3030(1) of the SC Code of Laws, as amended, **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**, by submitting this Bid, affirms that it has carefully examined the Bidding Documents and the other related data identified in the Bidding Documents, has visited the actual location of the Work, has satisfied itself as to all conditions and understands that, in signing this Bid Form, it waives all rights to plead any misunderstanding regarding same and agrees to be bound by the provisions of said Bidding Documents and all statements made therein.

4. **BIDDER** acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into its Bid:

ADDENDUM No: 1, 2

5. **BIDDER** accepts all terms and conditions of the *Invitation for Construction 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 **AGENCY**. **BIDDER** understands that Bid Alternates that are not accepted in an initial award shall remain open for acceptance for the entire period set above and for such longer period as requested by **AGENCY** and agreed to by **BIDDER**.

6. **BIDDER** 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, 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):

Up to three (3) Contractors will provide construction, restoration, renovations and/or repairs as directed by the SC Military Department, Office of The Adjutant General, Facilities Management Office for facilities located within the State of South Carolina. There is no minimum amount of work that will be guaranteed under this Contract. The Contract will be for a term of two (2) years. Each Contractor shall have a current General Contractors License (Building Group #4) at the time of the Bid and throughout the entire period of the Contract.

\$ 72,110.00, which sum is hereafter called the **BASE BID**.
(enter BASE BID in figures only)

SE-330 Bid Form

LISTING OF PROPOSED SUBCONTRACTORS

1. A **SUBCONTRACTOR** is an entity who will perform work or render service to the prime contractor to or about the construction site. Material suppliers, manufacturers and fabricators are not **SUBCONTRACTORS** and are not to be listed.
2. Any **BIDDER** responding to an *Invitation for Construction Bids* shall list in its bid the name of only those **SUBCONTRACTOR(S)** that will perform the work so identified in the *Invitation*.
3. If **BIDDER** determines to use its own employees to perform any portion of the work listed below, and if **BIDDER** is qualified to perform such work under the terms of the Bidding Documents, **BIDDER** shall list itself in the appropriate place in its bid and not subcontract any of that work except with the approval of the Agency for good cause shown.
4. **BIDDER** hereby acknowledges and agrees that any failure by **BIDDER** to list **SUBCONTRACTORS** in accordance with the requirements of the SC Code of Laws shall render the BID non-responsive.
5. A **SUBCONTRACTOR** listed for a **BID ALTERNATE** may be used for all work, including the Base Bid work, if the **BID ALTERNATE** is accepted.
6. **BIDDER** hereby states its commitment to use the below-listed **SUBCONTRACTORS** in the performance of the Subcontractor Speciality work listed:

SUBCONTRACTOR SPECIALTY (COMPLETED BY A/E)	SUBCONTRACTOR'S NAME or PRIME BIDDER'S NAME (MUST BE COMPLETED BY BIDDER)	SUBCONTRACTOR'S SC LICENSE NUMBER (FOR INFORMATION)
<u>BASE BID WORK</u>		
No Subcontractor Listing	_____	_____
Required	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
<u>ALTERNATE BID WORK</u>		
<u>BID ALTERNATE NO. 1</u>		
_____	_____	_____
_____	_____	_____
<u>BID ALTERNATE NO. 2</u>		
_____	_____	_____
_____	_____	_____
<u>BID ALTERNATE NO. 3</u>		
_____	_____	_____
_____	_____	_____
<u>BID ALTERNATE NO. 4</u>		
_____	_____	_____
_____	_____	_____

SE-330 Bid Form

TIME OF CONTRACT PERFORMANCE

BIDDER hereby agrees to complete the construction work in accordance with the following schedule:

1. The DATE OF COMMENCEMENT shall be established in Form SE-390, *Notice to Proceed*. The BIDDER shall not incur any expense chargeable to this Project until the Contract has been executed by both the Agency and the Contractor, and a Notice to Proceed has been issued.
2. The DATE OF SUBSTANTIAL COMPLETION, to be documented on Form SE-550A, *Certificate of Substantial Completion*, shall be (Per DO) CALENDAR DAYS from the DATE OF COMMENCEMENT set forth in the SE-390, subject to adjustments as provided in the Contract Documents.
3. The DATE OF FINAL COMPLETION, to be documented on Form SE-560C, *Certificate of Final Completion*, shall be (Per DO) CALENDAR DAYS from the DATE OF SUBSTANTIAL COMPLETION, subject to adjustments as provided in the Contract Documents.

LIQUIDATED DAMAGES AND EARLY COMPLETION AWARD

1. The undersigned further agrees that from the compensation to be paid, the Agency shall retain as Step One Liquidated Damages the amount of Per DO 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.
2. The undersigned further agrees that from the compensation to be paid, the Agency shall retain as Step Two Liquidated Damages the amount of Per DO for each calendar day the actual construction time required to achieve FINAL COMPLETION exceeds the specified or adjusted Contract Time for FINAL COMPLETION, as provided in the Contract Documents.
3. The undersigned further agrees that in full and complete satisfaction for the best efforts of the undersigned to achieve SUBSTANTIAL COMPLETION before the date established above, the Agency shall pay the undersigned an Early Completion Award in the amount of \$0.00 for each calendar day the actual construction time required to achieve SUBSTANTIAL COMPLETION is less than the originally specified Contract Time for SUBSTANTIAL COMPLETION, as provided in the Contract Documents.

AGREEMENTS

By submitting this Bid, BIDDER hereby agrees to the following terms and conditions:

1. An incomplete Bid, or information not requested that is written on or attached to this Bid Form that could be considered a qualification of the Bid, may be cause for rejection of the Bid.
2. The failure of the BIDDER to indicate a price for a BID ALTERNATE shall render the Bid non-responsive. A BID ALTERNATE shall be bid by indicating either a dollar amount or the words "No Change", "Zero", or "0.00". A typed or printed "No Bid", or words of similar meaning, shall render the Bid non-responsive. BIDDER must indicate whether the amount of the BID ALTERNATE is an "ADD" to or a "DEDUCT" from the amount of the Base Bid. The Bid may be determined non-responsive for failure of the BIDDER to indicate the appropriate "ADD" or "DEDUCT" for each BID ALTERNATE, unless the adjustment is obvious to the Agency.
3. If any BID ALTERNATES should be accepted by the AGENCY, they shall be incorporated into the executed Contract. BID ALTERNATES may be accepted in any combination or order, at the sole discretion of the AGENCY.
4. The BIDDER shall list only SUBCONTRACTORS (as defined in the Bidding Documents) who are qualified to perform items of work as specified in the Bidding Documents or as required by any material or equipment substitutions approved at the time of bidding. No BIDDER whose Bid is accepted shall substitute another entity as SUBCONTRACTOR in place of the SUBCONTRACTOR listed in the original Bid, except for one or more of the reasons allowed by the SC Code of Laws.
5. The failure of the BIDDER to provide the name(s) of listed SUBCONTRACTORS in accordance with the SC Code of Laws shall render the Bid non-responsive.
6. Unless otherwise provided in the Bidding Documents, BIDDER will provide Performance and Labor and Material Payment Bonds, each in the amount equal to 100% of the Contract Award, as a condition of execution of the Contract. Failure to supply such bonds as required by the Contract Documents shall result in cancellation of the Notice of Intent to Award and forfeiture of the Bid Bond.

SE-330 Bid Form

7. BIDDER agrees to provide all information requested by the AGENCY to support the AGENCY'S evaluation and determination of the BIDDER'S responsibility, including completion of Form SE-350, *Questionnaire for Contractors*. The Questionnaire shall be completed fully and returned to the AGENCY within SEVEN (7) DAYS from date of receipt by the BIDDER by certified mail. The completed Form SE-350 must be received by the Agency no later than the close of business on the seventh day. Failure by BIDDER to supply requested information with respect to responsibility may be grounds for a determination of non-responsibility.

8. The BIDDER certifies that it will provide a "Drug-Free Workplace" as that term is defined in Section 44-107-30 of the SC Code of Laws, and shall comply with the requirements set forth in Title 44, Chapter 107.

9. At any time prior to the issuance of the Notice to Proceed for this Project, this Contract may be canceled for the convenience of the State.

10. 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.

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 Form SE-335 included in the Bidding Documents.

(Electronic Bid Bond Number)

(Signature and Title)

BIDDER'S TAXPAYER IDENTIFICATION

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER:

57-0069132

OR

SOCIAL SECURITY NUMBER:

CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATIONS

GENERAL CONTRACTOR

(Classification)

(Subclassification)

UNLIMITED

(Limitations)

6-10862

(SC Contractor's License Number)

SIGNATURE

MONTERAY CONSTRUCTION Co., INC.

(Legal Name of Person, Firm or Corporation Submitting Bid)

8130 GARNERS FERRY RD, COLUMBIA, SC 29209

(Mailing Address for the above)

Sandi Bigell

BY

(Signature)

4/3/08

(Date)

GENERAL MANAGER

(Title)

776-4444

(Phone)



SE-335 Bid Bond

KNOW ALL PERSONS BY THESE PRESENTS THAT

Monteray Construction Co., Inc., 8130 Garners Ferry Rd., Columbia, SC 29209

(Insert full name and address or legal title of Bidder)

hereinafter referred to as "Principal," and

First National Insurance Company of America, Safeco Plaza, Seattle, WA 98185

(Insert full name and address of principal place of Surety)

a corporation duly organized and existing under the laws of the State of WA, with its principal office in the City of Seattle, and authorized to transact business in this State,

hereinafter called the "Surety", are jointly and severally held and firmly bound unto South Carolina National Guard

(Insert full name of Agency)

hereinafter referred to as "Obligee", the sum of \$ 7,500.00, being the sum of the Bond to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted to Obligee the accompanying bid incorporated by reference herein, dated as shown, to enter into a contract in writing for

IDC - General Construction - Proj. # E24-D059-SG

(Insert the State Project Number and Name as found on the SE-330, Bid Form)

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that default of Principal shall occur upon the failure of the Principal to deliver, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Obligee), the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents. This obligation shall be null and void if the Obligee shall accept Principal's Bid and Principal delivers, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Obligee), the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents; or all Bids are rejected by Obligee; or Obligee fails to issue a Notice of Intended Award to Principal within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Principal). Payment under this Bond shall be due and payable in full upon default of Principal and within 30 calendar days after receipt by Principal and Surety of written notice of default from Obligee, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue the Notice of Intended Award agreed to in writing by Obligee and Principal. 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 Bidding Documents and the laws of the State of South Carolina. Surety shall cause to be attached to the Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

IN WITNESS WHEREOF, Surety and Principal, intending to be legally bound hereby, subject to the terms stated above, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent or representative.

DATED this 3rd day of April, 2008 BOND NUMBER Bid

PRINCIPAL

Monteray Construction Co., Inc.

(Principal's Name)

BY: Samuel Beall, G.M.
(Signature and Title)

ATTEST: [Signature]
(Signature and Title)

SURETY

First National Insurance Company of America

(Surety's Name)

BY: Frank W. Hafner, III
(Signature and Title) Attorney-Hafner, III *(Attach Power of Attorney)* in-Fact

ATTEST: [Signature]
(Signature and Title)



POWER OF ATTORNEY

First National Insurance Company of America
Safeco Plaza
Seattle, WA 98185

No. 13277

KNOW ALL BY THESE PRESENTS:

That FIRST NATIONAL INSURANCE COMPANY OF AMERICA, a Washington corporation, does hereby appoint

*****FRANK W. HAFNER, III; W.D. MORRIS JR.; Columbia, South Carolina*****

its true and lawful attorney(s)-in-fact, with full authority to execute on behalf of the company fidelity and surety bonds or undertakings and other documents of a similar character issued by the company in the course of its business, and to bind FIRST NATIONAL INSURANCE COMPANY OF AMERICA thereby as fully as if such instruments had been duly executed by its regularly elected officers at its home office.

IN WITNESS WHEREOF, FIRST NATIONAL INSURANCE COMPANY OF AMERICA has executed and attested these presents

this 25th day of July, 2007

STEPHANIE DALEY-WATSON, SECRETARY

TIM MIKOLAJEWSKI, SENIOR VICE-PRESIDENT, SURETY

CERTIFICATE

Extract from the By-Laws of FIRST NATIONAL INSURANCE COMPANY OF AMERICA:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for that purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business... On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of
FIRST NATIONAL INSURANCE COMPANY OF AMERICA adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,

- (i) The provisions of Article V, Section 13 of the By-Laws, and
- (ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
- (iii) Certifying that said power-of-attorney appointment is in full force and effect,

the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

I, Stephanie Daley-Watson, Secretary of FIRST NATIONAL INSURANCE COMPANY OF AMERICA, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of this corporation, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 3rd day of April, 2008



STEPHANIE DALEY-WATSON, SECRETARY



SE-330 Bid Form

Bids shall be submitted only on SE-330

BID SUBMITTED BY: Southeast Construction Co., Inc
(Bidder's Name)

BID SUBMITTED TO: South Carolina Military Department, Office of The Adjutant General, Facilities Management Office
(Agency Name)

FOR PROJECT: E24 - D059 - SG - Indefinite Delivery Contract - General Construction
(Number) *(Name)*

OFFER

1. In response to the Form SE-310, *Invitation for Construction Bids*, 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 **AGENCY** in the form 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 Section 11-32-3030(1) of the SC Code of Laws, as amended, **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**, by submitting this Bid, affirms that it has carefully examined the Bidding Documents and the other related data identified in the Bidding Documents, has visited the actual location of the Work, has satisfied itself as to all conditions and understands that, in signing this Bid Form, it waives all rights to plead any misunderstanding regarding same and agrees to be bound by the provisions of said Bidding Documents and all statements made therein.

4. **BIDDER** acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into its Bid:

ADDENDUM No: 1, 2

5. **BIDDER** accepts all terms and conditions of the *Invitation for Construction 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 **AGENCY**. **BIDDER** understands that Bid Alternates that are not accepted in an initial award shall remain open for acceptance for the entire period set above and for such longer period as requested by **AGENCY** and agreed to by **BIDDER**.

6. **BIDDER** 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, 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):

 Up to three (3) Contractors will provide construction, restoration, renovations and/or repairs as directed by the SC Military Department, Office of The Adjutant General, Facilities Management Office for facilities located within the State of South Carolina. There is no minimum amount of work that will be guaranteed under this Contract. The Contract will be for a term of two (2) years. Each Contractor shall have a current General Contractors License (Building Group #4) at the time of the Bid and throughout the entire period of the Contract.

 \$ 75,925.00 , which sum is hereafter called the **BASE BID**.
(enter BASE BID in figures only)



SE-330 Bid Form

Bids shall be submitted only on SE-330

BID SUBMITTED BY: SOUTHEAST CONSTRUCTION CO., INC.
(Bidder's Name)

BID SUBMITTED TO: South Carolina Military Department, Office of The Adjutant General, Facilities Management Office
(Agency Name)

FOR PROJECT: E24 - D059 - SG - Indefinite Delivery Contract - General Construction
(Number) (Name)

OFFER

1. In response to the Form SE-310, *Invitation for Construction Bids*, 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 **AGENCY** in the form 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 Section 11-32-3030(1) of the SC Code of Laws, as amended, **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**, by submitting this Bid, affirms that it has carefully examined the Bidding Documents and the other related data identified in the Bidding Documents, has visited the actual location of the Work, has satisfied itself as to all conditions and understands that, in signing this Bid Form, it waives all rights to plead any misunderstanding regarding same and agrees to be bound by the provisions of said Bidding Documents and all statements made therein.

4. **BIDDER** acknowledges the receipt of the following Addenda to the Bidding Documents and has incorporated the effects of said Addenda into its Bid:

ADDENDUM No: 1, 2

5. **BIDDER** accepts all terms and conditions of the *Invitation for Construction 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 **AGENCY**. **BIDDER** understands that Bid Alternates that are not accepted in an initial award shall remain open for acceptance for the entire period set above and for such longer period as requested by **AGENCY** and agreed to by **BIDDER**.

6. **BIDDER** 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, 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):

Up to three (3) Contractors will provide construction, restoration, renovations and/or repairs as directed by the SC Military Department, Office of The Adjutant General, Facilities Management Office for facilities located within the State of South Carolina. There is no minimum amount of work that will be guaranteed under this Contract. The Contract will be for a term of two (2) years. Each Contractor shall have a current General Contractors License (Building Group #4) at the time of the Bid and throughout the entire period of the Contract.

_____, which sum is hereafter called the BASE BID.
(enter BASE BID in figures only)

SE-330 Bid Form

TIME OF CONTRACT PERFORMANCE

BIDDER hereby agrees to complete the construction work in accordance with the following schedule:

1. The **DATE OF COMMENCEMENT** shall be established in Form SE-390, *Notice to Proceed*. The BIDDER shall not incur any expense chargeable to this Project until the Contract has been executed by both the Agency and the Contractor, and a Notice to Proceed has been issued.
2. The **DATE OF SUBSTANTIAL COMPLETION**, to be documented on Form SE-550A, *Certificate of Substantial Completion*, shall be (Per DO) **CALENDAR DAYS** from the **DATE OF COMMENCEMENT** set forth in the SE-390, subject to adjustments as provided in the Contract Documents.
3. The **DATE OF FINAL COMPLETION**, to be documented on Form SE-560C, *Certificate of Final Completion*, shall be (Per DO) **CALENDAR DAYS** from the **DATE OF SUBSTANTIAL COMPLETION**, subject to adjustments as provided in the Contract Documents.

LIQUIDATED DAMAGES AND EARLY COMPLETION AWARD

1. The undersigned further agrees that from the compensation to be paid, the Agency shall retain as **Step One Liquidated Damages** the amount of Per DO 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.
2. The undersigned further agrees that from the compensation to be paid, the Agency shall retain as **Step Two Liquidated Damages** the amount of Per DO for each calendar day the actual construction time required to achieve **FINAL COMPLETION** exceeds the specified or adjusted Contract Time for **FINAL COMPLETION**, as provided in the Contract Documents.
3. The undersigned further agrees that in full and complete satisfaction for the best efforts of the undersigned to achieve **SUBSTANTIAL COMPLETION** before the date established above, the Agency shall pay the undersigned an **Early Completion Award** in the amount of \$0.00 for each calendar day the actual construction time required to achieve **SUBSTANTIAL COMPLETION** is less than the originally specified Contract Time for **SUBSTANTIAL COMPLETION**, as provided in the Contract Documents.

AGREEMENTS

By submitting this Bid, BIDDER hereby agrees to the following terms and conditions:

1. An incomplete Bid, or information not requested that is written on or attached to this Bid Form that could be considered a qualification of the Bid, may be cause for rejection of the Bid.
2. The failure of the BIDDER to indicate a price for a **BID ALTERNATE** shall render the Bid non-responsive. A **BID ALTERNATE** shall be bid by indicating either a dollar amount or the words "No Change", "Zero", or "0.00". A typed or printed "No Bid", or words of similar meaning, shall render the Bid non-responsive. BIDDER must indicate whether the amount of the **BID ALTERNATE** is an "ADD" to or a "DEDUCT" from the amount of the Base Bid. The Bid may be determined non-responsive for failure of the BIDDER to indicate the appropriate "ADD" or "DEDUCT" for each **BID ALTERNATE**, unless the adjustment is obvious to the Agency.
3. If any **BID ALTERNATES** should be accepted by the **AGENCY**, they shall be incorporated into the executed Contract. **BID ALTERNATES** may be accepted in any combination or order, at the sole discretion of the **AGENCY**.
4. The BIDDER shall list only **SUBCONTRACTORS** (as defined in the Bidding Documents) who are qualified to perform items of work as specified in the Bidding Documents or as required by any material or equipment substitutions approved at the time of bidding. No BIDDER whose Bid is accepted shall substitute another entity as **SUBCONTRACTOR** in place of the **SUBCONTRACTOR** listed in the original Bid, except for one or more of the reasons allowed by the SC Code of Laws.
5. The failure of the BIDDER to provide the name(s) of listed **SUBCONTRACTORS** in accordance with the SC Code of Laws shall render the Bid non-responsive.
6. Unless otherwise provided in the Bidding Documents, BIDDER will provide Performance and Labor and Material Payment Bonds, each in the amount equal to 100% of the Contract Award, as a condition of execution of the Contract. Failure to supply such bonds as required by the Contract Documents shall result in cancellation of the Notice of Intent to Award and forfeiture of the Bid Bond.

SE-330 Bid Form

LISTING OF PROPOSED SUBCONTRACTORS

1. A **SUBCONTRACTOR** is an entity who will perform work or render service to the prime contractor to or about the construction site. Material suppliers, manufacturers and fabricators are not **SUBCONTRACTORS** and are not to be listed.
2. Any **BIDDER** responding to an *Invitation for Construction Bids* shall list in its bid the name of only those **SUBCONTRACTOR(S)** that will perform the work so identified in the *Invitation*.
3. If **BIDDER** determines to use its own employees to perform any portion of the work listed below, and if **BIDDER** is qualified to perform such work under the terms of the Bidding Documents, **BIDDER** shall list itself in the appropriate place in its bid and not subcontract any of that work except with the approval of the Agency for good cause shown.
4. **BIDDER** hereby acknowledges and agrees that any failure by **BIDDER** to list **SUBCONTRACTORS** in accordance with the requirements of the SC Code of Laws shall render the **BID** non-responsive.
5. A **SUBCONTRACTOR** listed for a **BID ALTERNATE** may be used for all work, including the Base Bid work, if the **BID ALTERNATE** is accepted.
6. **BIDDER** hereby states its commitment to use the below-listed **SUBCONTRACTORS** in the performance of the Subcontractor Speciality work listed:

SUBCONTRACTOR SPECIALTY (COMPLETED BY A/E)	SUBCONTRACTOR'S NAME or PRIME BIDDER'S NAME (MUST BE COMPLETED BY BIDDER)	SUBCONTRACTOR'S SC LICENSE NUMBER (FOR INFORMATION)
<u>BASE BID WORK</u>		
No Subcontractor Listing	_____	_____
Required	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
<u>ALTERNATE BID WORK</u>		
<u>BID ALTERNATE NO. 1</u>		
_____	_____	_____
_____	_____	_____
<u>BID ALTERNATE NO. 2</u>		
_____	_____	_____
_____	_____	_____
<u>BID ALTERNATE NO. 3</u>		
_____	_____	_____
_____	_____	_____
<u>BID ALTERNATE NO. 4</u>		
_____	_____	_____
_____	_____	_____

SE-330 Bid Form

7. BIDDER agrees to provide all information requested by the AGENCY to support the AGENCY'S evaluation and determination of the BIDDER'S responsibility, including completion of Form SE-350, *Questionnaire for Contractors*. The Questionnaire shall be completed fully and returned to the AGENCY within SEVEN (7) DAYS from date of receipt by the BIDDER by certified mail. The completed Form SE-350 must be received by the Agency no later than the close of business on the seventh day. Failure by BIDDER to supply requested information with respect to responsibility may be grounds for a determination of non-responsibility.

8. The BIDDER certifies that it will provide a "Drug-Free Workplace" as that term is defined in Section 44-107-30 of the SC Code of Laws, and shall comply with the requirements set forth in Title 44, Chapter 107.

9. At any time prior to the issuance of the Notice to Proceed for this Project, this Contract may be canceled for the convenience of the State.

10. 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.

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 Form SE-335 included in the Bidding Documents.

(Electronic Bid Bond Number)

(Signature and Title)

BIDDER'S TAXPAYER IDENTIFICATION

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER:

57-0940579

OR

SOCIAL SECURITY NUMBER:

CONTRACTOR'S CLASSIFICATIONS AND SUBCLASSIFICATIONS WITH LIMITATIONS

GENERAL CONTRACTOR

(Classification)

(Subclassification)

UNLIMITED

(Limitations)

G-107624

(SC Contractor's License Number)

SIGNATURE

SOUTHEAST CONSTRUCTION CO., INC

(Legal Name of Person, Firm or Corporation Submitting Bid)

8130 BARNERS FERRY RD, COLUMBIA, SC 29209

(Mailing Address for the above)

BY

[Signature]

(Signature)

4/3/08

(Date)

PRESIDENT

(Title)

600-8096

(Phone)



SE-335 Bid Bond

KNOW ALL PERSONS BY THESE PRESENTS THAT

Southeast Construction Co., Inc., 8130 Garners Ferry Rd., Columbia, SC 29209

(Insert full name and address or legal title of Bidder)

hereinafter referred to as "Principal," and

First National Insurance Company of America, Safeco Plaza, Seattle, WA 98185

(Insert full name and address of principal place of business of Surety)

a corporation duly organized and existing under the laws of the State of WA, with its principal office in the City of Seattle, and authorized to transact business in this State,

hereinafter called the "Surety", are jointly and severally held and firmly bound unto

South Carolina National Guard

(Insert full name of Agency)

hereinafter referred to as "Obligee", the sum of \$ 7,500.00, being the sum of the Bond to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted to Obligee the accompanying bid incorporated by reference herein, dated as shown, to enter into a contract in writing for IDC - General Construction - Proj. # E24-D059-SG

(Insert the State Project Number and Name as found on the SE-330, Bid Form)

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that default of Principal shall occur upon the failure of the Principal to deliver, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Obligee), the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents. This obligation shall be null and void if the Obligee shall accept Principal's Bid and Principal delivers, within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Obligee), the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents; or all Bids are rejected by Obligee; or Obligee fails to issue a Notice of Intended Award to Principal within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Principal). Payment under this Bond shall be due and payable in full upon default of Principal and within 30 calendar days after receipt by Principal and Surety of written notice of default from Obligee, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue the Notice of Intended Award agreed to in writing by Obligee and Principal. 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 Bidding Documents and the laws of the State of South Carolina. Surety shall cause to be attached to the Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

IN WITNESS WHEREOF, Surety and Principal, intending to be legally bound hereby, subject to the terms stated above, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent or representative.

DATED this 3rd day of April, 2008 BOND NUMBER Bid

PRINCIPAL

Southeast Construction Co., Inc.

(Principal's Name)

BY: [Signature]
(Signature and Title)

ATTEST: [Signature]
(Signature and Title)

SURETY

First National Insurance Company of America

(Surety's Name)

BY: [Signature]
Frank W. *(Signature and Title)* Attorney-
Hafner, III *(Attach Power of Attorney)* in-Fact

ATTEST: [Signature] Assistant
(Signature and Title)



POWER OF ATTORNEY

First National Insurance Company of America
Safeco Plaza
Seattle, WA 98185

No. 13277

KNOW ALL BY THESE PRESENTS:

That FIRST NATIONAL INSURANCE COMPANY OF AMERICA, a Washington corporation, does hereby appoint

*****FRANK W. HAFNER, III; W.D. MORRIS JR.; Columbia, South Carolina*****

its true and lawful attorney(s)-in-fact, with full authority to execute on behalf of the company fidelity and surety bonds or undertakings and other documents of a similar character issued by the company in the course of its business, and to bind FIRST NATIONAL INSURANCE COMPANY OF AMERICA thereby as fully as if such instruments had been duly executed by its regularly elected officers at its home office.

IN WITNESS WHEREOF, FIRST NATIONAL INSURANCE COMPANY OF AMERICA has executed and attested these presents

this 25th day of July, 2007

STEPHANIE DALEY-WATSON, SECRETARY

TIM MIKOLAJEWSKI, SENIOR VICE-PRESIDENT, SURETY

CERTIFICATE

Extract from the By-Laws of FIRST NATIONAL INSURANCE COMPANY OF AMERICA:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for that purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business... On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of
FIRST NATIONAL INSURANCE COMPANY OF AMERICA adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,

- (i) The provisions of Article V, Section 13 of the By-Laws, and
- (ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
- (iii) Certifying that said power-of-attorney appointment is in full force and effect,

the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

I, Stephanie Daley-Watson, Secretary of FIRST NATIONAL INSURANCE COMPANY OF AMERICA, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of this corporation, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 3rd day of April, 2008



STEPHANIE DALEY-WATSON, SECRETARY

**INSTRUCTIONS TO BIDDERS
FOR
INDEFINITE DELIVERY CONTRACT – CONSTRUCTION
USING AN ACTUAL PROJECT WITH LUMP SUM BID**

SECTION I - GENERAL

A. General Information

1. It is the intention of _____ (Agency) to solicit bids for construction work generally described as new construction, renovation, restoration, and repair work for facilities owned or operated by the Agency. Work is to be performed at the following location(s):

(Insert general locations of work areas)

2. This solicitation includes a model project, which is an actual project that the Agency will award by Delivery Order, along with and as a part of an Indefinite Delivery Contract, to the lowest responsive and responsible bidder. The lowest responsive and responsible bidder shall perform the work of the model project for its bid price.

3. The Agency will award additional Indefinite Delivery Contracts to other bidders starting with the second lowest responsive and responsible bidder then the third lowest responsive and responsible bidder and so forth, in the manner set forth in these instructions.

4. The Agency will identify subsequent work to be done under the awarded Indefinite Delivery Contracts throughout the term of the Contracts. This subsequent work will be issued through Delivery Orders. The Agency will solicit competitive quotes to perform the work covered by a Delivery Order from a minimum of three Indefinite Delivery Contractors. The Agency will award the Delivery Order to the lowest bidder of the three or more Indefinite Delivery Contractor solicited. The low bidder shall perform the Delivery Order work for the amount of his quote.

5. All Indefinite Delivery Contracts issued under this solicitation will be for a period not to exceed two years.

6. The Agency does not guarantee a minimum amount of work, nor does it guarantee the size or quantity of any work that is awarded under any of the Indefinite Delivery Contracts awarded pursuant to the solicitation.

7. This solicitation does not commit the Agency to award a contract nor to pay for any cost incurred by the bidder in the preparation of a bid.

8. The Agency intends to award a minimum of three Indefinite Delivery Contracts under this procurement, but reserves the right to award additional contracts as necessary and in the best interest of the Agency.

9. Each Indefinite Delivery Contract shall allow the Agency to award the contractor a total amount of work via Delivery Orders not to exceed \$750,000. No single Delivery Order may exceed \$150,000.

10. Bidders by submitting a bid, certify under oath that their bids were arrived at independently in open competition as set forth in the "Certification of Independent Price Determination" included as a part of this solicitation.

11. Other information concerning the work of this Invitation: *(To be inserted by Agency)*

B. Architect/Engineer

1. The Architect or Engineer of Record (A/E) will be identified on each Delivery Order.
2. In the absence of an A/E the Agency will act in that capacity.

C. Contractor's Licensing

1. Bidders must be properly licensed in the discipline and the Group Classification to permit an award of Delivery Orders to a total of \$150,000 maximum per single Project.
2. This license must be maintained for the term of the Contract.

D. Subcontractors

1. Some work may be required to be done under the work of a Delivery Order that will require performance by one or more Specialty subcontractor(s). The terms and conditions of the Contract must be passed to the sub-contractor to protect the rights of the Agency.
2. Subcontractors shall be properly licensed as required by the S.C. Contractors' Licensing Law.
3. The Agency reserves the right to review the Contractor's proposed subcontractors and to request substitution of those to which the Agency has reasonable objection.

E. Authority

This solicitation is being issued pursuant to Section 11-35-3310 of the South Carolina Consolidated Procurement Code and related Statutes, as amended.

F. Definition

Any reference to "Manual" means the *Manual for Planning and Execution of State Permanent Improvements-Part II* as issued by the Office of State Engineer (OSE).

SECTION II – PRE-BID CONFERENCE

A. The Agency may hold a mandatory or non-mandatory pre-bid conference as a prerequisite for bidding as shown on Form SE-310 – *Invitation for Bids*.

B. The Agency has the right to schedule more than one mandatory or non-mandatory pre-bid conference if deemed to be in the best interest of the State. If a mandatory pre-bid conference is held and only one perspective bidder attends, then:

1. The conference may be cancelled and a new mandatory or non-mandatory pre-bid conference advertised to be held at a later date; or
2. An additional mandatory or non-mandatory pre-bid conference may be advertised and held at a later date and must be attended by a least on additional prospective bidder; or
3. The project will be advertised for open competitive bidding.

C. The A/E will issue an addendum after a mandatory pre-bid conference listing the names of all companies that were represented at the conference. Only companies represented will be allowed to submit bids.

SECTION III - OBTAINING BID DOCUMENTS

- A. Bidders may obtain bid documents as stated in SE-310 – *Invitation for Bids*.
- B. Deposits and refunds will be as stated in the SE-310 – *Invitation for Bids*.
- C. Bidders shall use complete sets of documents. No partial sets will be issued.

SECTION IV - EXAMINATION OF BID DOCUMENTS

- A. The Bidder shall carefully examine the bid documents. Any requests for substitution, questions, clarifications or interpretations of the bid documents shall be made in writing to the A/E at least 10 days prior to Bid Date. No oral instruction will be given prior to bidding.
- B. Should the Bidder notice any errors, conflicts or other inconsistencies with the bidding documents, the Bidder shall notify the A/E.
- C. Corrections, interpretations, clarifications, and changes, which modify the bid documents, will be made by official addendum only. Any other form of communication, oral or written, is unofficial and non-binding on the Agency.

SECTION V - ADDENDA

If the A/E amends the contract documents prior to bidding, an addendum will be issued. All addenda will be sent to all bidders of record. No addendum will be issued later than the fifth calendar day prior to Bid Date except to withdraw the bid or to extend the date for receipt of bids. Bidders are responsible to ascertain that they have received copies of all addenda issued prior to bidding. Bids received that do not acknowledge receipt of all addenda shall be rejected as non-responsive except for the following reasons:

1. The addendum only gives clarifications or list attendees at a mandatory pre-bid conference;
2. The bid received clearly indicates that the bidder received the addendum; or,
3. The addendum clearly would have had no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery as defined in The Consolidated Procurement Code, Regulations, and Manual. and does not affect the relative standing of the Bidders. Under no circumstances can the bid amount be changed or modified.

SECTION VI - PREPARATION AND DELIVERY OF BIDS

- A. Bidders are cautioned to completely fill-in information requested on the Form SE-330, *Bid Form*, contained in the Project Manual using non-erasable media.
- B. Bidders are not to qualify their bid by including extraneous information on the Form SE-330, *Bid Form*.
- C. Bid Security shall accompany the bid in the amount of \$7,500.00. Failure of the Bidder to enter into an agreement with the Agency, or to correct any Bid deficiencies as required by The Consolidated Procurement Code, Regulations, and Manual shall cause the Bid Security to be forfeited to the Agency. Acceptable Bid Security shall be one of the following:
 1. Form SE-335, *Bid Bond*, made payable to the Agency and issued by a surety company licensed to do business in South Carolina.
 2. A certified cashier's check made payable to the Agency.
- D. To be acceptable, a Bid Bond shall:
 1. 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". In addition, the surety shall have a minimum "Best Financial Strength Category" of "Class V, and in no case less than five (5) times the maximum Delivery Order amount.
 2. Be accompanied by a certified and current power of attorney by the attorney-in-fact who executes the bond on the behalf of the surety company; and,

3. Be enclosed in the bid envelope at the time of Bid Opening, either in paper copy or as a Bid Bond authorization number provided on the Bid Form.
- E. The Agency shall have the right to retain the Bid Security of the four lowest responsive bidders for each contract award anticipated until:
1. The contracts have been executed; or
 2. The specified time for bid acceptance has elapsed so that Bids may be withdrawn; or
 3. All Bids have been rejected.
- F. Bidders submitting Bid Security not meeting the required amount or surety rating and financial strength shall have one working day from bid opening to cure the deficiency or the bid shall be declared non-responsive. Bid security must be at least 80% of the required amount to be eligible for correction.
- G. Bids and Bid Security, and any other documents required to be submitted with the Bid should be enclosed in a sealed, opaque envelope. The envelope should be addressed to the party receiving the Bids and shall be identified with the project name, number, and the Bidder's name and address.
- H. The Bidder shall assume full responsibility for timely delivery of the Bid at the appropriate location designated for the receipt of Bids as shown on the Form SE-310 – *Invitation for Bids*.
1. Bidders attending the Bid opening should bring their Bids to the place of the Bid opening and deliver the Bid to the procurement officer of the Agency or his designee prior to the time of the Bid opening.
 2. Bids sent by mail or special delivery service (UPS, Federal Express, etc.) should be labeled "SEALED BID ENCLOSED", and shall be addressed to the Agency designated purchasing office as shown in the Form SE-310 – *Invitation for Bids*. Delivery of Bids to the above location shall be prior to the time of Bid opening. Bids not received at the above location or the Agency's mail room prior to the time of Bid opening will be subject to rejection.
- I. Bidders should include all special documents requested to be submitted with the Bid. If these documents are not included with the Bid, the Bidder shall have 24 hours from the time set for the Bid opening to submit these documents or the Bid may be considered non-responsive.

SECTION VII - BIDDER'S REPRESENTATIONS

- A. By submitting a Bid for this solicitation, the Bidder certifies that it:
1. Is the legal entity for the company submitting the Bid, and has full authority to bind the company into contractual obligations with the Agency for work as stated in the Contract Documents;
 2. Is properly licensed in accordance with the South Carolina Contractors' Licensing Law to perform the work as required in the Contract Documents;
 3. Understand the Bidding Documents to the extent that they are able to offer a bid for future work in accordance with the Contract Documents;
 4. Will maintain a drug-free workplace in accordance with Title 44, Chapter 107 of the SC Code of Laws;
 5. Is qualified to submit a bid by attendance at the mandatory pre-bid conference if required;
 6. Has the financial means to complete the work offered by this solicitation;
 7. Is able to obtain Performance and Labor & Material Payment Bonds in the amounts of \$150,000 each and maintain a minimum total bonding capacity of \$750,000 available for this Contract for the duration of the Contract.
 8. Arrived at its bid independently in open competition in accordance with the "Certification of Independent Price Determination" included as a part of this solicitation.

SECTION VIII - WITHDRAWAL OR REVISION OF BIDS PRIOR TO BID OPENING

Prior to the time and date designated for receipt of Bids, a Bid may be modified or withdrawn by notice to the party receiving Bids. Any modifications shall be in writing on the Bid Form and over the signature of the Bidder.

SECTION IX - OPENING OF BIDS

- A. Bids received on time will be opened publicly and read aloud.
- B. The date and location of the posting of the Form SE-370, *Notice of Intent to Award*, will be announced.
- C. The Agency shall send a copy of the Certified Bid Tabulation to all Bidders within 10 working days after receipt of Bids.
- D. The Agency shall send a copy of the Form SE-370, *Notice of Intent to Award*, to all Bidders after posting.
- E. If only one Bid is received, the Bid may be opened and considered. If an award is made in such a case, it shall only be for the performance of the work of the model project. The lone bidder will not be eligible for additional Delivery Orders until such time as the Agency has awarded and entered into Indefinite Delivery Contracts with at least two other contractors pursuant to a subsequent solicitation.

SECTION X - IRREGULAR BIDS

- A. The Agency shall have the right to reject any or all Bids, reject a Bid not accompanied by a required Bid security or other data required by the Bidding documents, or reject a Bid that is in any way incomplete or irregular.
- B. Bids shall be rejected for the following reasons, which shall not be limited to:
 - 1. Failure by a Bidder to be represented at a mandatory Pre-Bid Conference.
 - 2. Failure to deliver the Bid on time and at the place required.
 - 3. Failure to comply with Bid security requirements except as allowed by the Bidding Documents.
 - 4. Showing any modification(s) or exception(s) qualifying the Bid.
 - 5. Faxing a Bid directly to the Agency or their representative.
 - 6. Failure to include in the Bid envelope all items required by the Bid Documents except as allowed by paragraph I in Section VI.
- C. Bids shall not be rejected for the following reasons, which shall not be limited to:
 - 1. Failure to write "Sealed Bid Enclosed" on the outside of the mailing envelope.
 - 2. Failure to seal the Bid envelope.
 - 3. Listing a modification to the Bid on the outside of the envelope (such modifications will not be considered).
 - 4. Failure to list any information on the envelope other than which may be required by law.
 - 5. Providing a fax copy or other reproduction of any Bidding Documents in the Bid envelope.
 - 6. Failure of the Bidder to sign the Bid, provided it is accompanied by a properly prepared Bid security, or other information, as required.
 - 7. Providing a reproduction of a signature on Bidding documents.

SECTION XI - CONSIDERATION OF BIDS

- A. Failure by a Bidder to correct any deficiency as requested may cause the Bid to be rejected as non-responsive.
- B. The Agency shall not award a contract before the eleventh day after the Form SE-370, *Notice of Intent to Award*, is Instructions to Bidders

posted. If only one Bid is received and determined to be responsive and responsible, award may be made, subject to the provisions of Section IX(E) of these Instructions, after posting the Form SE-370 without the ten-day waiting period.

- C. Contractor's Qualifications - A prospective Contractor shall be considered as meeting the state standards of responsibility when the firm has:
1. Appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate his ability 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;
 5. Supplied all necessary information in connection with the inquiry concerning responsibility;
- D. Each Bidder submitting a Bid shall, upon request, submit a completed Form SE-350, *Questionnaire for Contractors*.
- E. The basis of contract award: The Agency will award an Indefinite Delivery Contract to the lowest responsive and responsible bidder. The Agency will also award a Delivery Order under the foregoing Indefinite Delivery Contract to the lowest responsive and responsible bidder for the performance of the model project included in this solicitation. The amount of this delivery order shall be deducted from the amounts set forth in Section I(A)(9) of these Instructions in determining the total value of subsequent Delivery Orders that may be awarded to this bidder.
- F. The Agency will also award Indefinite Delivery Contracts to other bidder's starting with the second low bidder, then the third low bidder and so forth. The total number of Indefinite Delivery Contracts awarded shall be at the Agency's discretion but shall not be less than three.

SECTION XII - AWARD OF CONTRACT

- A. At the conclusion of the ten-day waiting period after the Form SE-370, *Notice of Intent to Award*, is issued, the Agency will issue to the successful Bidder(s) three copies of the Contract for the bidder's signature.
- B. The successful Bidder shall obtain, and forward to the Agency, a copy of the certificate of insurance as required (see Section IX) and the copies of the Contract signed by the Bidder.
- C. After approval by the Office of State Engineer, the Agency may sign the Contract and forward a fully executed contract to the Bidder.
- D. After the Contract is fully executed, Work may be awarded to the successful Bidder in the manner described in the Contract.

SECTION XIII - BONDS

When required by the Agency, the Contractor shall provide and pay the cost of Performance and Labor and Material Payment Bonds as described and defined in Article 13 of the Contract.

SECTION XIV - OTHER

- A. Bids sent by mail or special delivery service (UPS, Federal Express, etc.) should be labeled "Sealed Bid Enclosed", and shall be addressed to the Agency designated purchasing office as follows:

Agency Name:

Agency Designated Purchasing Office:

Delivery Address:

(Include building and room number)

Name of Agency Representative:

B. Special documents required to be submitted with the Bid for this project include:

(Agency insert list of special forms)

C. The location of the posting of the Form SE-370 shall be:

Name or Number of Room/Area of Posting:

Name of Building where Room/Area is Located:

Address of Building:

SAMPLE