

CHAPTER 9

INDEFINITE QUANTITY AND TASK ORDER CONTRACTS

9.1 RELATED STATUTORY AUTHORITY

- 9.1.1 SC Code § 11-35-830 creates within the State Fiscal Accountability Authority (SFAA) the State Engineer's Office and requires that all procurements of construction, architectural and engineering, construction management, and land surveying services and any pre-procurement and post-procurement activities in this area be conducted in accordance with the Manual for Planning and Execution of State Permanent Improvements.
- 9.1.2 SC Code § 11-35-3310 allows Agencies to award Indefinite Quantity Contracts for architectural-engineering and land surveying services pursuant to § 11-35-3220 and § 11-35-3230.
- 9.1.3 SC Code § 11-35-3320 allows Agencies to award Task Order Contracts to acquire construction services pursuant to § 11-35-1530, not including paragraph (4) (Request for Qualifications) or paragraph (8) (Negotiations).

9.2 DEFINITIONS

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

9.3 GENERAL REQUIREMENTS FOR SOLICITATION OF AN INDEFINITE QUANTITY CONTRACT

- 9.3.1 The solicitation for an IDQ contract shall include the following:
 - A. Period of the contract;
 - B. Maximum dollar value of the services to be procured under the contract;
 - C. Maximum dollar value of the services to be procured under a single Delivery Order;
 - D. Statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services to be procured under the contract in a manner that will enable a prospective Offeror to decide whether to submit an offer;
 - E. Any geographic limitations to the contract, e.g., a specific campus of the Agency; and
 - F. Any required Contractor response times.
- 9.3.2 Each Delivery Order shall include a statement of work that clearly specifies all work to be performed under the Delivery Order so the full price for the performance of the work can be established when the Delivery Order is placed. Delivery Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract. Delivery Orders must not be artificially divided.
- 9.3.3 At any given time, an Agency may enter into one or more IDQs in accordance with the provisions contained in this chapter for each of the following categories: architectural services, landscape architectural services, professional engineering services, land surveying services, interior design services and construction management agent services.

9.4 PROFESSIONAL SERVICES INDEFINITE QUANTITY CONTRACTING

9.4.1 The Indefinite Quantity Contract

A. PROCURING INDEFINITE QUANTITY CONTRACTS

- 1. The Agency procures Architect/Engineer, Land Surveyor, and Construction Management Agent service (hereinafter "professional service") IDQ's in the same manner as all professional services described in Chapter 4, except using the 600 series forms. Unless expressly modified by this section, the Agency must follow the procedures set forth in Chapter 4 (Small Contracts and Large Contracts) for soliciting professional services, selecting professionals, submitting documentation to OSE, obtaining OSE approvals, and contracting with professionals.

2. Agencies need to obtain an IDQ project number from OSE prior to soliciting for resumes. To obtain an IDQ number, contact OSE at (803) 737-0634. OSE will assign an IDQ project number with the prefix "P" following the Agency number and the assigned project manager, e.g., J16-P027-PM.
3. If the Agency intends to award more than one contract for a specific category of service, the Agency must place notification in the advertisement for professional services that it will award multiple contracts and the maximum number of contracts it intends to award. The number of awards an Agency makes shall not exceed the number specified in the advertisement. The Agency should interview at least 2 additional firms over the number of contracts it intends to award.
4. With OSE approval of a Request to Award Multiple IDQ Contracts for the Same Services (SE-600), the Agency may, by notification in the advertisement for professional services, award IDQ contracts to more than five firms under the same advertisement and interview process.

B. CONTRACT FORM

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

C. INDEFINITE QUANTITY CONTRACT LIMITATIONS

1. The sum of all Delivery Orders issued during the two-year term of the contract under a small IDQ may not exceed \$50,000. This maximum amount does not include payments for reimbursable expenses.
2. If the Agency has had other small contracts with a particular professional, the Agency may not be able to contract with that professional using a small IDQ. The total value of fees paid to a single firm may not exceed \$150,000, excluding reimbursable expenses, for all small Professional contracts awarded by the Agency to the firm in a 24-month period.
3. The sum of all Delivery Orders issued during the two-year term of the contract under a large IDQ may not exceed \$300,000. Individual Delivery Orders under these contracts may not exceed \$100,000. For an approved higher education institution, the sum of all Delivery Orders issued during the two-year term of the contract under a large professional services IDQ may not exceed \$500,000. For an approved higher education institution, individual Delivery Orders under these contracts may not exceed \$200,000.
4. Agencies may not use multiple IDQs or Delivery Orders to receive professional services normally procured as full scope professional services contract, unless both:
 - a. The Agency has staff qualified to provide project management; and
 - b. The cumulative professional fees for the project do not exceed \$100,000 for large IDQs and \$50,000 for small IDQs. For an approved higher education institution cumulative professional fees for the project do not exceed \$200,000 for large.
5. The Agency shall not issue multiple Delivery Orders to a single indefinite quantity professional for work on an individual professional services project. An individual professional services project, as used in this chapter, is an individual project and includes all professional services necessary for or related to an individual construction project.
6. Because of the coordination and accompanying liability and risk management issues attendant to contracting with multiple designers to accomplish a project design, the Agency should not use multiple IDQs for work on an individual project. However, if they do, the combined fees may not exceed the single Delivery Order limit.
7. The Agency may not amend a contract to extend its termination date beyond 2 years from the date of execution or above the maximum dollar limits stated above.

9.4.2 Delivery Orders Assigned to the IDQ

- A. The Agency is authorized to issue Delivery Orders for indefinite quantity contracts without first obtaining OSE approval.
- B. All IDQ Delivery Orders must be awarded based on qualifications and NOT on price.
- C. An Agency may not use an IDQ to broker work that is not covered by the professional service requested for the IDQ.
- D. **DELIVER ORDER FORM:** The Agency shall use the Indefinite Quantity Contract Delivery Order – Small Contract (SE-635), with small IDQ's and the Indefinite Quantity Contract Delivery Order – Large Contract (SE-645), with all other IDQs and include the following:
 1. Defined scope of work;
 2. Description of the services and deliverables the professional will provide;
 3. A fee schedule for services the professional will provide; and
 4. Description of the timeframe for completion of the work.

E. AMENDMENTS TO INDEFINITE QUANTITY CONTRACT DELIVERY ORDERS

1. The parties may amend a Delivery Order provided the amendment does not cause the value of the Delivery Order or the IDQ to exceed the statutory limits outlined in subsection 9.4.1.C.
2. Either the Agency or the professional may initiate a request for an amendment to the Delivery Order using the Indefinite Quantity Contract Delivery Order Modification – Small Contract (SE-638), or the Indefinite Quantity Contract Delivery Order Modification – Large Contract (SE-648).
3. In either event, the A/E should prepare a cost and technical proposal for the amendment and submit it to the Agency for approval. The cost proposal must be based on the fee schedule of the Delivery Order and the estimated labor/hour breakdown for anticipated services under the amendment.

F. COMPLETION OF THE DELIVERY ORDER WORK AFTER THE IDQ TERMINATION DATE

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

9.5 GENERAL REQUIREMENTS FOR SOLICITATION OF A TASK ORDER CONTRACT**9.5.1** The solicitation for a TOC shall include the following:

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

9.5.2 Every award of a Task Order Contract must be approved by OSE.**9.5.3** At any given time, an Agency may enter into one or more TOCs in accordance with the provisions contained in this chapter for each licensing classification and subclassification for construction services. Licensing classification and subclassifications shall have the meaning provided by Chapters 10, 11 and 79 of Title 40 SC Law.**9.6 CONSTRUCTION SERVICES TASK ORDER CONTRACTING****9.6.1 The Task Order Contract****A. PROCURING TASK ORDER CONTRACTS**

1. Agencies need to obtain a TOC project number from OSE prior to soliciting qualifications. To obtain a TOC project number, contact OSE at (803) 737-1683. OSE will assign a TOC number with the prefix “C” following the Agency number and the assigned project manager, e.g., J16-C027-PM.
2. The Agency must award four (4), and only four (4), contracts for each specific category of service.
3. OSE must approve award of all Task Order Contracts regardless of the Agency’s construction contract certification.

B. CONTRACT FORM

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

C. TASK ORDER CONTRACT LIMITATIONS

1. Task Order Contracts must be for a term of three (3) years with two (2) automatic 1-year extensions (unless Agency does not extend). The Agency may shorten this time; however, the maximum time allowed for the contract, with extensions, is five (5) years.
2. The sum of all Task Orders issued under a single TOC (includes all 4 Contractors) during the five-year term of the contract may not exceed \$4,000,000. If the expenditure limit is reached before the five-year term limit, an Agency must solicit for a new TOC.

3. The minimum amount of a Task Order is \$90,000. The maximum amount of a Task Order is \$350,000. The total construction cost of a single project performed using multiple Task Orders or Task Orders in combination with other types of contracts (not small purchases) may not exceed \$500,000. Projects may not be divided artificially to avoid these limitations.
4. The Agency may not amend a contract to extend its termination date beyond five (5) years from the date of execution or above the maximum dollar limits stated above.
5. Before the Agency can initiate an individual project using Task Order Contractors estimated to cost more than the lower limits established for a Permanent Improvement Project in the Policies and Guidance for Establishment and Maintenance of Permanent Improvement Projects, the Agency must submit the project to the Joint Bond Review Committee (JBRC) and State Fiscal Accountability Authority (SFAA) for approval.

9.6.2 Selection and Award of Task Order Contract

A. SELECTION COMMITTEE

1. To procure a Task Order Contract, the Agency must establish a Selection Committee (Committee). The Committee must be composed of those individuals the Agency determines to be qualified to make an informed decision as to the most competent and qualified firms. The Committee shall consist of no less than 3 voting members and the OSE Project Manager as a non-voting advisory member. The voting members of the Committee shall be state employees or considered to be state employees. For the purpose of meeting this requirement, members of Agency Boards, acting in their official capacity, are considered state employees.
2. Committee members are subject to the Ethics, Government Accountability and Campaign Reform Act of 1991. They should become familiar with the requirements of this act and avoid any conflict of interest.
 - a. The Committee Chair must require each member to sign an SE-614 stating that they have read and understand those standards of conduct and that they do not have an actual or apparent conflict of interest relating to the proposed acquisition. Other persons involved in the process must also sign an SE-614. For example, the Agency Head is not a member of the Committee but has final say over the Committee's decision, so they must sign a SE-614. The same is true for members of a Board of Trustees and administrative associates who assist in document preparation and handling
 - b. If a Committee Member has an actual or apparent conflict of interest related to a proposal under evaluation, the Chair must remove that member and, if a sufficient number of voting members do not remain, request the Agency Head to replace them with another.
 - c. If a Committee Member has a current or past relationship with an Offeror but does not believe the relationship creates a conflict of interest or is not sure, the member must notify the Committee Chair of the relationship for a determination as to whether an actual conflict of interest exists.
3. The Committee must comply with the Freedom of Information Act (FOIA); however, committee members must not disclose confidential information derived from proposals and negotiations submitted by competing Offerors during the selection process. There is a summary of the requirements of this act in Chapter 1.

B. INVITATION FOR TASK ORDER CONTRACT

1. The Agency must prepare the invitation on an Invitation for Task Order Contract (SE 655) and include the following information:
 - a. Project name and number;
 - b. Project location as the geographic area to which the contract applies, e.g. a specific campus of the Agency;
 - c. The contract term;
 - d. Maximum dollar value of the services to be procured under the contract;
 - e. Maximum and minimum dollar value of the services to be procured under a single Task Order;
 - f. A description that reasonably describes the licensing classification or subclassification required to perform the work and the general scope, nature, complexity and purposes of the services to be procured under the contract in a manner that will enable a prospective Offeror to decide whether to submit an offer;
 - g. The submission due date; and
 - h. How interested firms may obtain the Contractor's Statement of Qualifications & Questionnaire.
2. Once the Agency is ready to advertise, it must submit the completed SE-655 to OSE in MS Word format for review and approval.

3. Upon approval, OSE will submit the SE-655 to South Carolina Business Opportunities (SCBO) for advertisement. The Agency may advertise elsewhere but must advertise in SCBO.

C. CONTRACTORS' LICENSING

1. A Contractor submitting on TOC projects must be licensed as required by the SC Contractor's Licensing Board (SCLLR) for the license classification or subclassification of work covered by the solicitation and the license must allow the Bidder to perform work valued at \$350,000.
2. An Agency may not use a TOC Contractor to broker work that is not covered by the Contractor's license.
3. The Agency shall verify licensing with SCLLR. OSE will not comment on licensing issues.

D. EVALUATION OF SUBMITTALS

1. Upon receiving the Contractor's Statement of Qualifications & Questionnaire in response to the invitation for construction services, the Agency shall review them for completeness. In the event of an incomplete submittal, the Agency may contact the firm to obtain the required information. The Agency may disqualify any Contractor that fails to supply required information before the due date from further consideration.
2. The Committee will convene a meeting for the purpose of evaluating submittals using the following criteria:
 - a. Past performance;
 - b. Ability of proposed personnel;
 - c. Financial information regarding the firm's ability to provide required bonding and insurance;
 - d. Location of the Contractor's proposed office in relation to the project area;
 - e. Contractor's general project experience;
 - f. Volume of state contracts awarded;
 - g. Other criteria included in the solicitation.
3. Each Committee Member must complete an evaluation of all submittals using the Selection Committee Member Contractor Evaluation – Task Order Contract (SE-657). If a Committee Member determines two Contractors to be equally qualified, the Committee Member must re-evaluate their rankings to break any ties in scores prior to submitting the SE-657 to the Committee Chair (Chair).
4. After each Committee Member has completed and submitted their SE-657 to the Chair, the Chair must compile these rankings into a committee ranking using the Selection Committee Summary – Task Order Contract (SE-658).
5. If the Committee determines two Contractors to be equally qualified, the Committee must re-evaluate their rankings to break any ties in final rankings. This can be done in the following order:
 - a. The Chair shall compare the sums of the raw scores for the two tied Contractors from the SE-115's of all voting Committee Members. The Contractor with the highest sum of raw scores shall be ranked above the other;
 - b. The Committee shall rank the SC resident Contractor higher than the out-of-state Contractor;
 - c. If one of the tied Contractors is a business certified as a Minority Business Enterprise by the SC Office of Small and Minority Business Assistance, it shall be ranked higher than the other;
 - d. If the tied firms are SC resident Contractors, the Contractor located in the same taxing jurisdiction as the Agency's project shall be ranked higher than the other;
 - e. By Committee consensus on which proposal is the most advantageous to the State.

E. FINAL DETERMINATION AND NOTIFICATION OF AWARD

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

9.6.3 Task Orders Assigned to the Task Order Contract

A. OSE REVIEW

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

B. SOLICITING AND AWARDING A TASK ORDER

1. To award an individual Task Order, the Agency must solicit competitive bids from all four (4) Contractors on the TOC. OSE recommends the Agency remind the Contractors of the dollar limits of the Task Orders before requesting the quotes.
2. The Agency must receive at least two (2) responsive, bona fide bids in response to its solicitation. If one or more TOC Contractors declines to provide a bid, the Agency must document that fact.
3. The Agency must award the Task Order to the Contractor providing the lowest quote as long as the lowest quote is within the Task Order dollar limits.
4. If the lowest quote for a Task Order is below the \$90,000 limit, the Task Order must be withdrawn. The Agency must follow the Small Purchase method found in Chapter 8 to re-quote the project. The TOC Contractors cannot be invited to quote the Small Purchase; however, if the Small Purchase is advertised in SCBO, the Agency may accept a quote from any of their Task Order Contractors.

C. TASK ORDER FORM

1. The Agency shall award a Task Order using the Construction Services Task Order (SE-690).
2. If the project is submitted to OSE for review, the 'PROJECT NUMBER' will either be the PIP or Non-PIP number of the project for which the Work is to be completed.
3. The Agency must establish Task Order numbers assigned to the contract for its record keeping purposes.

D. AMENDMENTS TO TASK ORDERS

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

E. PERFORMANCE AND PAYMENT BONDS

The Agency must obtain Performance Bonds and Labor & Material Payment Bonds in the amount of 100% of the Task Order amount for all Task Orders.

F. COMPLETION OF THE TASK ORDER AFTER THE TOC TERMINATION DATE

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