

## CHAPTER 4

# PROCURING PROFESSIONAL SERVICES INDEPENDENT OF CONSTRUCTION SERVICES

### 4.1 RELATED STATUTORY AUTHORITY

- 4.1.1 SC Code §§ 8-13-700 through 8-13-795 of the [Ethics, Government Accountability and Campaign Reform Act of 1991](#) establishes the Rules of Conduct for public employees.
- 4.1.2 SC Code § 11-35-2910 defines architect-engineer and land surveying services, and construction management agent services.
- 4.1.3 SC Code § 11-35-3015(2)(a) requires that architect-engineer, construction management agent, and land surveying services be procured as provided in § 11-35-3220 unless those services are acquired in conjunction with construction using one of the project delivery methods provided in Section 11-35-3015(3), (5), (6), (7), and (8).
- 4.1.4 SC Code § 11-35-3215 provides a preference for design services to firms with an adequate number of persons domiciled in SC to perform the majority of the design services when qualifications appear to be equal. SC Code § 11-35-3220 outlines the qualification base selection procedures including the criteria that shall be used by the Agency Selection Committee to evaluate the interviewed firms.
- 4.1.5 SC Code § 11-35-3230(1) outlines the selection requirements for small contracts.
- 4.1.6 SC Code § 11-35-3230(4) prohibits breaking projects into small projects for the purpose of circumventing the provisions of § 11-35-3220.
- 4.1.7 SC Code § 11-35-3245 prohibits architects or engineers who perform design work on a project under a contract awarded pursuant to § 11-35-3220 or § 11-35-3230 from also performing construction work on that project.
- 4.1.8 SC Code § 11-35-3310 allows indefinite quantity contracts to be awarded on an as-needed basis for construction related professional services pursuant to procurement procedures set forth in §§ 11-35-3220 and 11-35-3230.
- 4.1.9 SC Code § 11-35-4210 provides information to protest a solicitation or an award. See [Chapter 1](#) for details on the protest process including lifting the stay on further action.

### 4.2 DEFINITION

#### 4.2.1 Professional Services

The term Professional Services as used in the remainder of this Chapter and wherever referred to in the Manual, shall mean architect-engineer (A/E), construction manager agent, or land surveying services as defined in SC Code § 11-35-2910.

### 4.3 SMALL PROFESSIONAL SERVICES CONTRACTS (FEES OF \$50,000 OR LESS)

- 4.3.1 Small professional services contracts are used for professional services where the total compensation is \$50,000 or less. This includes Small Indefinite Quantity Contracts (see [Chapter 9](#)).
- 4.3.2 This sum includes compensation for both basic services and additional services as defined in the Contract. The sum does not include payments for reimbursable expenses.
- 4.3.3 The Agency may award contracts by direct negotiation and selection considering the following criteria:
  - A. The nature of the project;
  - B. The proximity of the firm to the project;
  - C. The capability of the firm to produce the required services within a reasonable time;
  - D. Past performance; and
  - E. Demonstrated ability to meet time and budget requirements.
- 4.3.4 Subject to the foregoing considerations, the Agency may enter contract negotiations with the selected firm. The total value of small professional contracts awarded by the Agency to the firm in a twenty-four (24) month period may not exceed \$150,000, excluding reimbursable expenses.
- 4.3.5 In awarding a small professional services contract, the Agency should request a firm to submit a proposal letter along with Small Professional Services Contract ([SE-240](#)). See Section 4.4.1 for exception for professional incidental services...After executing the contract, the Agency must submit a copy to OSE using the Transmittal of Small Professional Service Contract ([SE-230](#)).
- 4.3.6 Splitting of Larger Projects Prohibited. Agencies may not break a project into small projects for the purpose of circumventing the provisions of SC Code § 11-35-3220.

- 4.3.7 When negotiating a Small Professional Services Contract, agencies may only negotiate with one firm at a time. Any unsuccessful negotiations must be concluded in writing before starting negotiations with another firm. Once negotiations with a firm have been concluded, negotiations may not be reopened.
- 4.3.8 Preference for resident firms does not apply to small contracts. However, selection of a nonresident firm must be supported by a written determination explaining why the award was made to the selected firm and placed in the procurement file.

#### 4.4 PROFESSIONAL INCIDENTAL SERVICES

- 4.4.1 The Professional Incidental Services Contract ([SE-235](#)) may be used for incidental services such as studies, master plans, reports, etc., of any amount. For fees of \$50,000 or less, the A/E proposal for services and the [SE-235](#) are attached to the [SE-230](#) and submitted to OSE. For fees exceeding \$50,000, the A/E proposal for services and the [SE-235](#) are attached to the Request for Concurrence in Posting Notice of Intent to Award Professional Services Contract ([SE-220](#)), and submitted to OSE.

#### 4.5 LARGE PROFESSIONAL SERVICES CONTRACTS

##### 4.5.1 Selection Committee

- A. To procure professional services with fees in excess of \$50,000, the Agency must establish a Selection Committee (Committee) and conduct a qualifications-based selection. The Committee must be composed of those individuals the Agency Head determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The Committee shall consist of no less than three (3) voting members. 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.
- B. The Committee may be comprised of voting and non-voting members. Potential members may include:
  1. End user of the project (Dean, Director, etc.);
  2. Director of Agency engineering/planning; and/or
  3. Director of Agency physical plant.
- C. The Agency Head or their designee sits as a permanent member of the Committee for the purpose of coordinating and accounting for the Committee's work.
- D. The Agency may invite the OSE Project Manager to sit on the Committee as a non-voting member.
- E. Committee members are subject to the [Ethics, Government Accountability and Campaign Reform Act of 1991](#).
  1. Each member of the Committee must sign the Professional Services Selection Committee - Confidentiality and Conflict of Interest Policy ([SE-214](#)) 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-214](#). For example, if the Agency Head is not a member of the Committee but has final say over the Committee's decision, the Agency Head must sign an [SE-214](#). The same is true for Board members and administrative associates who assist in document preparation and handling.
  2. If a Committee member has an actual or apparent conflict of interest related to a proposal under evaluation, they must be removed and, if at least three (3) voting members do not remain, the Agency Head must replace them with another.
  3. 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 Agency Head or their designee of the relationship for a determination as to whether an actual conflict of interest exists.
- F. The Committee must comply with the Freedom of Information Act. 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 and copies of the [State Fiscal Accountability Authority \(SFAA\) FOIA Meeting Guide](#) and [SFAA FOIA Document Guide](#) can be found on the [DPS website](#) in the [General Information - Legal](#) section.

#### 4.5.2 Selection Committee Duties

In summary, the duties of the Committee are to:

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

#### 4.5.3 Invitation for Professional Services

- A. The Agency must prepare the Invitation for Professional Services ([SE-210](#)).
- B. If the Agency intends to use an Alternate Delivery Method, they should have approval from OSE before advertising for professional services.
- C. The date for submission of information from interested firms in response to the invitation must not be less than fifteen (15) days after publication of the invitation.
- D. Once the Agency is ready to advertise, it must submit the completed [SE-210](#) to OSE.
- E. Upon approval, OSE will submit the [SE-210](#) to [South Carolina Business Opportunities \(SCBO\)](#) for advertisement. The Agency may advertise elsewhere but must advertise in [SCBO](#).

#### 4.5.4 Short-Listing Professionals for Interviews

- A. Upon receiving submittals in response to the [SE-210](#), the Agency shall review them for completeness. Each submittal shall include the following information:
  - 1. Federal Standard Form 330;
  - 2. Certification stating whether the business meets the South Carolina resident preference;
  - 3. Information responsive to the selection criteria; and
  - 4. Any other information that the invitation required.
- B. Participation in a previous report or study for a project does not disqualify a firm from submitting for the project, unless the creation of the report or study provides the firm with a substantial competitive advantage. The Agency should provide a copy of the report or study to all shortlisted firms in preparation for interviews.
- C. In the event of an incomplete submittal, the Agency may contact the firm to obtain the required information provided the submittal due date has not passed. Firms must submit any such supplemental information before the submittal due date. The Agency may disqualify any firm that fails to supply required information before the due date from further consideration for non-responsiveness.
- D. The Committee must evaluate all submittals in accordance with the criteria listed in Section 4.5.5.E.
- E. A firm responding to an invitation for design services must submit a certification stating whether it is a South Carolina resident. The certification shall document the firm has an adequate number of persons, that will perform the majority of the design services, domiciled in SC. Submission of a false certification is grounds for suspension or debarment.
- F. When the Committee finds two firms to be equally qualified, and one is a nonresident, the Committee must rank the resident firm higher than the nonresident.
- G. After evaluating the submittals, the Committee shall create a short-list of firms considered most qualified for the Committee to interview.
- H. The Committee shall select a minimum of three (3) firms for interviews.
  - 1. If fewer than three (3) firms responded to the Invitation, the Committee should interview each firm.
  - 2. If only one submittal is received, the Committee should evaluate the firm's qualifications. The Committee may or may not conduct an interview.
  - 3. If no submittals are received, the Agency must close the procurement as follows:
    - a. Submit a Request for Concurrence in Posting Notice of Intent to Award Professional Services Contract ([SE-220](#)) to OSE with "No Submittals Received" shown as the Firm Name.
    - b. After OSE approval of the [SE-220](#), post the Notice of Intent to Award Professional Services Contract ([SE-221](#)) with "No Submittals Received" shown as the Name of Firm Selected.
- I. The Committee must prepare a written report supporting its determination as to which firms it chose to interview using the Selection Committee Report for Interview Selection ([SE-211](#)).

- J. The Agency must post the Notification of Selection for Interview ([SE-212](#)) at the location shown in the Invitation and send the [SE-212](#) electronically to all firms that responded to the Invitation (along with the [SE-211](#)) the same day it is posted.

#### 4.5.5 Interviewing and Evaluating Short Listed Professionals

- A. No later than ten (10) business days before the interview date, the Committee shall send, individually, written notice to the shortlisted firms of the date, location, and scheduled time for interviews.
- B. All interviews should occur on the same day. The order of the interviews shall be chosen at random.
- C. If the Committee will be interviewing the firms in various locations, the Agency should make sure that each location is similarly equipped and furnished.
- D. Each voting member of the Committee must be present for each interview. Only members of the Committee may be present during interviews and interviews must be held in “executive session”, see the [SFAA FOIA Meeting Guide](#) for more information on “executive session” and meeting notice posting requirements.
- E. During the interviews, the Committee must evaluate the firms on the following criteria:
  - 1. Past performance;
  - 2. Ability of professional personnel;
  - 3. Demonstrated ability to meet time and budget requirements;
  - 4. Proximity to and knowledge of the locality of the project (application of this criterion must leave an appropriate number of qualified firms, given the nature and size of the project);
  - 5. Recent, current, and projected workloads of the firm;
  - 6. Creativity and insight related to the project;
  - 7. Related experience on similar projects;
  - 8. Volume of work awarded by the using Agency to the firm during the previous five (5) years - objective is to equitably distribute contracts among qualified firms including certified Minority Business Enterprises and firms that have not had previous state work; and  
NOTE: Firms awarded more work in the last five (5) years must be scored lower than those who have been awarded less.
  - 9. Other special qualifications required by the solicitation.
- F. The Committee must not discuss fees and compensation with the firms during the interviews.
- G. After the close of all interviews, each voting member must complete an evaluation of the interviewed firms using the Professional Services Selection Committee Member A/E Evaluation ([SE-215](#)). If the sum of the scores by a voting member produces a tie between two or more firms, the voting member must re-evaluate their rankings to break the ties prior to submitting the [SE-215](#), first considering the resident preference.
- H. After each voting member has completed their [SE-215](#), the individual rankings should be compiled into a committee ranking using the Professional Services Selection Committee Summary ([SE-217](#)).
- I. If the Selection Committee Summary compilation of rankings results in more than one firm receiving the same ranking, the Committee shall first break the tie by the resident firm preference. If both firms are resident or nonresident firms, the Committee shall decide by consensus which firm is most qualified.
- J. Selection of a nonresident firm must be supported by a written determination explaining why the award was made to the selected firm and the determination placed in the procurement file.

#### 4.5.6 Final Determination and Notification of Selection

- A. The Committee’s decision on the most qualified firm is final, subject only to the Agency’s internal approval process. The Agency must then prepare a Notification of Selection for Professional Services Contract ([SE-219](#)), listing the most qualified firm.
- B. The Agency will submit the [SE-219](#) to OSE (along with all copies of the [SE-214](#), [SE-215](#) and [SE-217](#)).
- C. Upon approval of the [SE-220](#) by OSE, the Agency will send the [SE-219](#) electronically to all firms that responded to the Invitation.

#### 4.5.7 Negotiating Professional Services Contracts

- A. The Agency must negotiate with the most qualified firm.
- B. If the Agency is unable to negotiate an acceptable contract with that firm, the Agency must terminate those negotiations formally and negotiate with the second most qualified firm. See Section 4.5.8 for terminating negotiations and negotiating with another firm.

- C. Successful contract negotiations require an exchange of information. The Agency should provide the firm with the Agency's budgetary goals for the project, master plans, program data, Agency standards, and all available technical information about the project work area. This will enable the firm to estimate the design effort required for the project. Examples of technical information the Agency should provide, if available, include:
  - 1. Program (unless it is to be developed by the Professional).
  - 2. Site boundary and/or topography surveys.
  - 3. Testing and surveys for hazardous material.
  - 4. Sub-surface investigations.
  - 5. Material testing, etc.
- D. The Agency should obtain a description of the services the firm proposes to provide and determine if the proposed scope of services is adequate or excessive.
- E. The Agency should become familiar with the standard Professional Services contracts: SCOSE versions of the AIA Document [B101](#), [B133](#), [B132](#) and the Professional Incidental Services Contract ([SE-235](#)). During the review of the contract, the Agency should consider any number of questions. Examples are:
  - 1. Are the insurance limits adequate to cover the potential risk on this project and if not, are we willing to bear the risk?  

All design professionals working for the State should carry professional liability insurance. The OSE contracts set forth a recommended minimum amount of insurance. These amounts consider the State's limited liability under Sovereign Immunity. The Agency should evaluate their risks associated with each project and the potential consequences and adjust the amounts accordingly.
  - 2. If we want increased insurance limits, are we willing to pay the additional cost? (Check with the firm to see what their insurance limits are. They may already be greater than the limits stated in the contract.)
  - 3. What deliverables do we want?
  - 4. Do we have critical delivery dates for some or all the deliverables and if so, what are they?
  - 5. Do we want digital drawings and if so what format and media?
- F. The standard contracts authored by OSE are time-tested and contain some specific requirements the state cannot relinquish. Agencies should consult the OSE prior to agreeing to any proposed change.
- G. After exchanging information, agreeing to contract terms, and prior to submittal to OSE, the Agency is in a position to consider what would be a fair and reasonable fee for the firm's services. The OSE Project Manager may be consulted to assist.
- H. In addition to negotiating the Basic Services Fee, the Agency should negotiate any required Supplemental and/or Additional Services (those not covered by the scope of the Basic Services fee) and the reimbursable expenses.

#### 4.5.8 Unsuccessful Negotiations

- A. If the Agency is unable to negotiate a contract with the most qualified firm, the Agency may terminate negotiations with written notice of the termination of negotiations to the firm.
- B. Upon providing written notice of termination, the Agency must prepare a new [SE-219](#) indicating the intent to negotiate with the next most qualified firm. After submittal of the new [SE-219](#) to OSE, and approval by OSE, the new Notice must be provided to all firms responding to the invitation.
- C. The Agency may attempt to negotiate with the new firm.
- D. If the Agency is unable to negotiate with this firm, the Agency may continue the process in the same manner until the Agency is able to negotiate a contract. At no time, should negotiations include more than one firm.

#### 4.5.9 Successful Negotiations Submittal to OSE

- A. Following successful negotiations, the Agency must submit a Request for Concurrence in Posting Notice of Intent to Award Professional Services Contract ([SE-220](#)), along with the proposed contract, to OSE.
- B. If the project is a PIP, the Agency must have an approved Form A-1 before submitting the [SE-220](#) to OSE.
- C. The Agency may not post the Notice of Intent to Award until OSE has approved the [SE- 220](#).
- D. OSE has ten (10) days to review and approve the [SE-220](#).
- E. If OSE does not approve the [SE-220](#), the State Engineer will give written notification to the Agency declaring his intention to contest the proposed contract and the reasons why. The SFAA will hear any such contest at its next regularly scheduled meeting after notification of the Agency. SFAA will notify the Agency in writing of its decision.



#### 4.5.10 Posting Notice of Intent to Award

- A. After the Agency receives the approved [SE-220](#), they must post the Notice of Intent to Award Professional Services Contract ([SE-221](#)) and send it electronically to all firms that responded to the Invitation the same day it is posted. Refer to Chapter 1 for protest rights associated with this posting.
- B. If no protests are received within the time noted on the [SE-221](#), the Agency may sign the contract and proceed with the project. If only one firm submitted qualifications and is awarded a contract, the protest period may be waived.

#### 4.5.11 No Contract to be Awarded

- A. If the Committee determines none of the firms that submitted are qualified to perform the work of the project, or the Committee determines that none of the firms interviewed are qualified to perform the work, the Agency must close the procurement as follows:
  - 1. Complete the [SE-219](#) with “No Contract to be Awarded” shown as the Name of Firm Selected and indicate the reason under “Remarks”. Send the [SE-219](#) to all firms that responded to the Invitation as noted in Section 4.5.6.
  - 2. Submit an [SE-220](#) to OSE with “No Contract to be Awarded” shown as the Firm Selected Name and indicate the reason under “Remarks”. Attach the [SE-211](#) and, if applicable, the [SE-212](#).
  - 3. After OSE approval of the [SE-220](#), post the [SE-221](#) with “No Contract to be Awarded” shown as the Name of Firm Selected and indicate the reason under “Remarks”. Send the [SE-221](#) to all firms that responded to the Invitation the same day it is posted.
- B. If the Agency decides, for other reasons, not to award a contract, they will follow the same procedure listed above indicating the reason under “Remarks.”

### 4.6 PROFESSIONAL SERVICES INDEFINITE QUANTITY CONTRACTS (IDQ)

- 4.6.1 A Professional Services Indefinite Quantity Contract (IDQ) is a contract whereby the professional agrees to provide professional services to the Agency on an “as-needed” basis during the term of the contract.
- 4.6.2 Agencies procure Professional Services IDQs in the same manner as any professional service contract as set forth in this chapter. However, they do not have to obtain OSE approval of the individual delivery orders to the contract.
- 4.6.3 [Chapter 9](#) provides guidance for procuring IDQs. The SE-600 series forms shall be used for IDQ professional services contracts.

### 4.7 PROCEDURES FOR AMENDING PROFESSIONAL SERVICES CONTRACTS

- 4.7.1 The Agency should negotiate fees for changes in the scope of work using good procurement practices and in keeping with the terms of the contract.
- 4.7.2 Small Professional Services contracts:  
After executing the amendment, the Agency must submit a copy to OSE using the Transmittal of Amendment to Small Professional Services Contract ([SE-232](#)) along with Amendment Request Summary – Small Contract ([SE-232, Page 2](#)).
- 4.7.3 Large Professional Services contracts that exceed the Agency’s A/E Contract Amendment certification:  
Prior to authorizing the work, the Agency must submit a completed Amendment to Professional Services Contract ([SE-260](#)) along with Amendment Request Summary ([SE-260, Page 2](#)) to OSE.
- 4.7.4 Large Professional Services contracts within the Agency’s A/E Contract Amendment certification:  
After executing the amendment, the Agency must submit a copy to OSE using the SE-260 & [SE-260 Page 2](#), indicating that the change is within Agency A/E Contract Amendment Certification.

### 4.8 SOLE SOURCE AND EMERGENCY SELECTION OF PROFESSIONAL SERVICES

The Agency must make all Sole Source and Emergency procurements in accordance with [Chapter 8](#). Prior OSE approval of such procurements is not required. Sole Source procurements must be documented using the Justification for Sole Source Procurement (MMO #102, Appendix F.2) and advertised in SCBO. Emergency procurements must be documented using the Justification for Emergency Procurement (MMO #103, Appendix F.2) and advertised in SCBO.

### 4.9 DESIGN PROFESSIONAL ERRORS AND OMISSIONS

- 4.9.1 The Agency should notify the A/E whenever the Agency believes the A/E’s work product contains errors or omissions. The A/E must correct any error or omission without cost to the Agency.
- 4.9.2 When the A/E’s error or omission results in costs to the Agency over those the Agency would have paid had the error or omission not occurred, the A/E is responsible for such additional cost. For purposes of determining costs, each error or omission constitutes a separate event.

- 4.9.3 If some or all the increased costs due to an error are owed to a third party, such as a Contractor, the A/E may elect to negotiate directly with the Contractor and pay the Contractor directly.
- 4.9.4 All work added due to an error or omission must be negotiated through the Agency to be sure the additional work is included in the construction contract by change order.