

## **CHAPTER 9 INDEFINITE DELIVERY CONTRACTS**

### **9.1 GENERAL**

#### **9.1.1 RELATED STATUTORY AUTHORITY**

SC Code § 11-35-3310 allows agencies to award indefinite delivery contracts for architectural-engineering and land surveying services pursuant to § 11-35-3220 and construction services pursuant to § 11-35-3015(2)(b).

SC Code § 11-35-830 creates within the Budget and Control Board 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.

SC Code § 11-35-3240 provides that a Manual for Planning and Execution of State Permanent Improvements may be published by the Budget and Control Board or its designee.

SC Code Regulation 19-445.2145(H) requires the State Engineer's Office to establish working procedures for indefinite delivery construction contracts and to include those procedures in the Manual for Planning and Execution of State Permanent Improvements.

#### **9.1.2 DEFINITIONS**

1. The term "Indefinite Delivery Contract" (IDC) means a contract that does not procure or specify a defined quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of delivery orders for the performance of tasks during the period of the contract.
2. A Professional Services Indefinite Delivery Contract (IDC) is a contract whereby the professional agrees to provide the Agency professional services on an "as-needed" basis during the term of the contract. Agencies procure Professional IDC's in the same manner as any professional service contract as set forth in Chapter 4 of this Manual. Part 2 below gives instructions for the use of indefinite delivery contracting for professional services.
3. A Construction IDC is a contract whereby the contractor agrees to provide the Agency construction services on an "as-needed" basis during the term of the contract. Agencies procure Construction IDC's in the manner set forth in Part 3 below.
4. A Delivery Order is an order issued by an Agency for either a professional or a contractor to perform work (tasks) under an IDC.

#### **9.1.3 GENERAL REQUIREMENTS FOR SOLICITATION OF AN IDC**

1. The solicitation for an IDC contract shall include the following:
  - (a) The period of the contract (an IDC may not exceed two years);
  - (b) The maximum dollar value of the services to be procured under the contract;
  - (c) The minimum dollar value of the services to be procured under the contract;
  - (d) The maximum dollar value of the services to be procured under a single delivery order;
  - (e) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer.
  - (f) The means of determining a price for each delivery order.
  - (g) A realistic estimated total quantity. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal;
  - (h) The procedures that the Agency will use in issuing orders for items of work, including the ordering media.
  - (i) Any geographic limitations to the contract, e.g., a specific campus of the Agency.

- (j) Any required contractor response times.
2. Each delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order so the full price for the performance of the work can be established when the order is placed. Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract. Orders must not be artificially divided.
3. At any given time, a governmental body may enter into one or more IDC's in accordance with the provisions contained in this Chapter for each of the following categories: architectural services, landscape architectural services, professional engineering services, land surveying services, interior design services, construction management agent services and each licensing classification and subclassification for construction services. Licensing classification and subclassification shall have the meaning provided by Chapter 11 of Title 40.

## **9.2: ARCHITECT-ENGINEER, LAND SURVEYOR AND CONSTRUCTION MANAGEMENT AGENT (A-E) SERVICES INDEFINITE DELIVERY CONTRACTING AND WORK ORDERS**

### **9.2.1 THE A-E SERVICES INDEFINITE DELIVERY CONTRACT**

#### **A. PROCURING A-E INDEFINITE DELIVERY CONTRACTS**

The agency procures Architect-Engineer, Land Surveyor, and Construction Management Agent service (hereinafter "professional service") IDC's in the same manner as all professional services described in Chapter 4. Unless expressly modified by this section, the agency must follow the procedures set forth in Chapter 4 for soliciting professional services, selecting professionals, submitting documentation to OSE, obtaining OSE approvals, and contracting with professionals.

With OSE approval of an Agency's written determination and justification of need, an Agency may, by notification in the advertisement for professional services, award IDC contracts to more than one person or firm under the same advertisement and interview process. The Agency's determination must set forth 1) why the Agency needs to award multiple contracts; 2) the means by which the Agency will make awards of delivery orders to the multiple contractors in order to provide the best quality and value to the state, and 3) the minimum number of awards necessary to meet the Agency's needs. If OSE approves the Agency's determination in writing, the Agency must place notification in the advertisement for professional services that it will award multiple contracts and the number of contracts it intends to award. The number of awards an Agency makes shall not exceed the number approved by OSE.

In the event the Agency makes multiple awards, the agency must, in coordination with OSE, assign an alpha/numeric identification to the project number so that each contract will have a unique contract number.

#### **B. CONTRACT TERMS**

The agency must prepare the contract to be used for its professional services IDC's. However, the contract must include terms consistent with the requirements outlined herein.

##### **1. Required Time Term**

Professional service IDC's must provide for termination of the contract within two years or less of the date of execution.

##### **2. Dispute Resolution Terms**

The IDC must provide for resolution of all disputes in accordance with the requirements of the South Carolina Consolidated Procurement Act.

##### **3. Insurance Terms**

The contract should include requirements for Errors & Omissions Insurance, Commercial General Liability Insurance, Automobile Insurance, and Workers Compensation Insurance.

##### **4. Consideration Necessary to Form a Contract**

The formation of a contract requires consideration. If the Agency awards an IDC with no obligation on the part of the Agency toward the contractor to provide any work to the contractor, there is no consideration and no contract. For the Agency to bind the contractor to provide work upon request and at agreed upon prices, the Agency should guarantee a minimum amount of work to each Indefinite Delivery Contractor.

## C. PROFESSIONAL SERVICES IDC PROHIBITIONS

Note: S.C. Code Ann. § 11-35-3310(2) was amended effective August 5, 2011 to raise the Indefinite Delivery Contract limits for approved Higher Education Institutions. All Universities are approved by the statute to use these higher limits. Each Technical College must receive approval from the State Board for Technical and Comprehensive Education to use the higher IDC Limits.

1. The sum of all Delivery Orders issued during the two year term of the contract under a small professional service IDC may not exceed \$25,000. For an approved Higher Education Institution, this limit is \$50,000.
2. If the agency has or has had other small contracts with a particular professional, the agency may not be able to contract with that professional using a small IDC. State Law prohibits entering into a small professional services contract if, as the sum of all fees, excluding reimbursable expenses, paid to the professional in the 24 months preceding contract negotiations exceeded \$75,000 for small contracts. See SC Code Ann § 11-35-3230(2). For an approved Higher Education Institution, this limit is \$150,000.
3. The sum of all Delivery Orders issued during the two year term of the contract under a large professional services IDC may not exceed \$300,000. For an approved Higher Education Institution, this limit is \$500,000.
4. Agencies may not use multiple IDC's or Delivery Orders to receive professional services normally procured as full scope professional services, 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 an approved Higher Education Institution, this limit is \$200,000.
5. The agency may not amend a contract to extend its termination date beyond 2 years from the date of execution.

## D. QUARTERLY REPORTS REQUIRED

The Agency must submit to OSE quarterly reports on all its IDC's. These reports must include each IDC with the IDC Number. For each IDC, the agency must list every Delivery Order issued under that IDC. For each Delivery Order, the agency must provide:

1. The Delivery Order number (Note: this cannot be the IDC number);
2. A brief description of the work the professional performed and/or will perform;
3. The PIP or Non-PIP project from which the agency pays the professionals fees; and
4. The total fees paid the professional.

If the agency submits a report that fails to include any of the required information, OSE will reject the report and return it to the agency for resubmission.

### 9.2.2 DELIVERY ORDERS ASSIGNED TO THE PROFESSIONAL SERVICES IDC

Unless revoked by OSE, each Agency is authorized to issue Delivery Orders for professional services without regard to the limits of its construction procurement certification and the agency may issue a Delivery Order without first obtaining OSE approval. However, the Agency shall provide OSE with a copy of every Delivery Order for professional services within 10 days of its issuance for informational purposes only. The Agency may deliver a copy of an order to the OSE project manager for the IDC by attaching a copy in portable document format (PDF) to an email.

## A. REQUIRED TERMS

In the Delivery Order, the agency must:

1. Define the scope of work;
2. Describe the services the professional will provide;
3. Provide a fee schedule for services the professional will provide; and
4. Describe the timeframe for completion of the work.

The Delivery Order may provide for either a lump sum payment to the professional or payment on an hourly basis with a "Not-to-Exceed" amount.

## **B. AMENDMENTS TO PROFESSIONAL SERVICES DELIVERY ORDERS**

The parties may amend a Delivery Order provided the amendment does not cause the value of the Delivery Order or the IDC to exceed the statutory limits outlined in subsections 1.1C and 1.2C.

Either the agency or the professional may initiate a request for an amendment to the Delivery Order. 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 hourly rates in the hourly fee schedule of the IDC, any fee schedule for incidental consultant services under the Delivery Order or amendment, and the estimated labor/hour breakdown for anticipated services under the amendment.

## **C. PROFESSIONAL SERVICES DELIVERY ORDER PROHIBITIONS**

1. The Agency shall not issue multiple delivery orders to a single Indefinite Delivery contractor for work on an individual professional services project.

a. An individual professional services project as used in this chapter is an individual project as used in SC Code 11-35-3310(1)(b) and includes all professional services necessary for or related to an individual construction project.

b. An individual construction project is as defined in Part 9.3 below.

c. Individual project expenditures as used in SC Code 11-35-3310(1)(b) means expenditures on an individual professional service project under one IDC.

2. The maximum amount the Agency may expend under a single large professional IDC for work on an individual professional service project may not exceed \$100,000. [For an approved Higher Education Institution, this limit is \\$200,000.](#) This also means that no delivery order may exceed \$100,000 [or for an approved Higher Education Institution \\$200,000.](#)

3. The maximum amount the Agency may expend under a single small professional IDC for work on an individual professional service project may not exceed \$25,000. [For an approved Higher Education Institution, this limit is \\$50,000.](#)

4. Because of the coordination and accompanying liability and risk management issues attendant to contracting with multiple designers to accomplish a project design, the Agency should not use multiple professional IDC's for work on an individual professional service project.

## **D. WHEN THE DELIVERY ORDER WORK WILL NOT BE DONE UNTIL AFTER THE IDC TERMINATION DATE**

Work on individual projects started within the two-year IDC contract period may continue past the time limit to bring the work to an expeditious completion. In such event, the agency must notify the OSE, in advance, of the need to start a project within the two-year period that it expects to continue past the time limit.

## **9.3 INDEFINITE DELIVERY CONTRACTING FOR CONSTRUCTION SERVICES**

### **9.3.1 GENERAL**

#### **A. PROCURING INDEFINITE DELIVERY CONTRACTS FOR CONSTRUCTION**

Agencies need to obtain an IDC project number from OSE prior to soliciting bids. To obtain an IDC project number, contact OSE at (803) 737-0772. OSE will assign an IDC number with the prefix "D" following the Agency number, e.g., J16-D027.

The Office of State Engineer (OSE) must authorize award of all Indefinite Delivery contracts for construction regardless of the agency's construction certification.

With OSE approval of an Agency's written determination and justification of need, an Agency may, award IDC contracts to more than one contractor under the same invitation for bid. The Agency's determination must set forth why the Agency needs to award multiple contracts and the minimum number of awards necessary to meet the Agency's needs. If OSE approves the Agency's determination in writing, the Agency must place notification in the invitation for bids that it will award multiple contracts and the number of contracts it intends to award. The number of awards an Agency makes shall not exceed the number approved by OSE.

## **B. BUILDING CODE COMPLIANCE.**

Unless OSE delegates its authority as the building official to the Agency, all work to be performed under a delivery order must be reviewed and approved by OSE for compliance with applicable building codes before the delivery order is issued. Applicable codes are set forth in Chapter 5 Part 5.1.

### **9.3.2 LIMITS OF INDEFINITE DELIVERY CONSTRUCTION CONTRACTS**

Note: S.C. Code Ann. § 11-35-3310(2) was amended effective August 5, 2011 to raise the Indefinite Delivery Contract limits for approved Higher Education Institutions. All Universities are approved by the statute to use these higher limits. Each Technical College must receive approval from the State Board for Technical and Comprehensive Education to use the higher IDC Limits.

#### **A. DOLLAR LIMITS**

1. The Agency shall not issue multiple delivery orders to a single Indefinite Delivery contractor for work on an individual construction project.
  - a. An individual construction project as used in this chapter is an individual project as used in SC Code 11-35-3310(1)(a) and includes all related construction work on a single building.
  - b. Individual project expenditures as used in SC Code 11-35-3310(1)(a) means expenditures on an individual project under one IDC.
2. The maximum amount the Agency may expend under a single construction IDC for work on an individual construction project may not exceed \$150,000. This means that no delivery order including the value of all amendments may exceed \$150,000. For an approved Higher Education Institution, this limit is \$250,000.
3. The sum of all expenditures made under a single IDC during the two-year term of the contract may not exceed \$750,000. For an approved Higher Education Institution, this limit is \$1 million.
4. The total cost of an individual construction project performed using multiple IDC contractors may not exceed \$150,000. For an approved Higher Education Institution, this limit is \$250,000. Pursuant to SC Code § 11-35-3010, the State Engineer Office hereby disapproves of any individual construction project delivered through Indefinite Delivery Contracting where the cost estimate for the project exceeds these amounts. The Agency may not divide an individual construction project into multiple projects to avoid this limitation.
5. Before the Agency can initiate an individual project using Indefinite Delivery Contractors estimated to cost more than the lower limits established for a permanent improvement project in the Manual for Planning and Execution of State Permanent Improvements, Part I, the Agency must submit the project to the Joint Bond Review Committee and Budget and Control Board for approval.

#### **B. DURATION**

An IDC must provide for termination of the contract within two years or less of the date of execution. Work on individual projects started before termination of the contract may continue past the term of the contract to bring the work to an expeditious completion. However, the Agency must notify OSE in advance of the need to start a project within the two-year term of the contract that it expects to continue past the term.

### **9.3.3 BID AND AWARD OF CONSTRUCTION IDC**

The bidding documents must accurately describe the method the Agency plans to use to arrive at a Base Bid. The Agency may use one of three methods for bidding IDC's:

#### **A. LOW BID**

Under this method, the Agency uses an actual project to solicit bids, not a hypothetical project nor a previously completed project but one that will be constructed by the low bidder. The Agency will award the project and an IDC to the lowest responsive and responsible bidder. The Agency may also award an IDC to other bidder's starting with the second low bidder, then the third low bidder and so forth. The Agency must contract with minimum of three contractors for each category of work (general construction, mechanical, etc.) for which it intends to issue delivery orders. When the Agency wants to issue a delivery order, it must seek quotes from all IDC contractors awarded a contract pursuant to a single solicitation and award the delivery order to the contractor submitting the lowest quote. The Agency's contract with each IDC contractor shall require the contractor to provide a quote when requested.

## **B. COST GUIDE AND MULTIPLIER**

Under this method, the Agency selects a published or specially prepared cost data guide similar to R. S. Means Cost Data series, R. S. Means JOCWorks, The Gordian Group guides, Saylor Publications guides, etc., as a basis for determining the price of delivery orders. The Agency will solicit proposals from bidders for a multiplier the bidder will apply to the cost in the cost data guide for determining the cost of its work. The typical Base Bid will be a decimal number. A multiplier of 1.00 will reflect the same unit prices as shown in the cost data guide. A multiplier of 0.75 will reflect a price 25% lower than the unit prices listed in the cost data guide. The Agency will award an IDC to the bidder with the lowest multiplier.

Unless the IDC contractor proposes to provide work at a lower price, the Agency must use the IDC contractor's multiplier and the cost data guide to price delivery orders assigned under their contract. The bidding documents should clearly explain that the unit prices in the cost data guide include all overhead, delivery, setup, installation, and profit. The contractor may not add any additional mark-up to its price. If the contractor chooses to subcontract some or all of the work, the contractor must still use its multiplier with the cost data guide for pricing the subcontracted work. However, if the subcontracted work is outside the contractor's license, the contractor may include a markup of 13% on the price of the subcontracted work. If the contractor proposes not to use its multiplier and the cost data guide as the basis for the price of its work or subcontracted work, it must document that the proposed price is lower than the price would be if the contractor used the multiplier and cost data guide. The Agency must include this documentation in its file.

## **C. UNIT PRICES**

Under this method, the Agency develops a comprehensive list of unit prices it will use in the bidding documents. The bid form lists estimated quantities and a description of each unit of work the bidders are to price. The Agency must provide appropriate quantities for each unit of work that will reflect the estimated amount of work a contractor will perform under a typical delivery order. The bidders must supply the unit price and multiply it times the number of units listed to arrive at an extended price. The total of all extended prices becomes the bidder's base bid.

The Agency may develop the bid package using an actual or hypothetical project with a complete take-off of work to be included for unit pricing. The Agency should include in the bid package a basis for adjusting the unit price should the actual quantity purchased vary substantially from the projected quantity.

Using the unit prices bid, pricing for Delivery Orders and Subcontracted work must be handled in the same manner as in B.

## **D. BID SECURITY**

The Agency shall require Bid security equal to 5% of the amount of work guaranteed in the solicitation to each awardee or if the low bid method of award is used, 5% of the bid amount.

## **E. CONSIDERATION NECESSARY TO FORM A CONTRACT**

The formation of a contract requires consideration. If the Agency awards an IDC with no obligation on the part of the Agency toward the contractor to provide any work to the contractor or the opportunity to bid on future delivery orders, there is no consideration and no contract. For the Agency to bind the contractor to provide work upon request and at agreed upon prices using the cost guide and multiplier or unit price method of award, the Agency should guarantee a minimum amount of work to each Indefinite Delivery Contractor.

### **9.3.4 CONTRACTORS' LICENSING**

A contractor bidding on IDC projects must be licensed as required by the Contractor's Licensing Board for the discipline of work covered by the solicitation and the license must allow the bidder to perform work valued at \$150,000. An Agency may not use an IDC contractor to broker work that is not covered by the contractor's license.

### **9.3.5 CONTRACT AWARD**

At the successful conclusion of the sealed bidding process for the IDC, the Agency must post a Notice of Intent to Award (SE-370) in accordance with the procedures set forth in Part 6.19 of Chapter 6 of this Manual.

### **9.3.6 AWARDING DELIVERY ORDERS**

#### **A. LOW BID**

If the Agency has awarded IDC's using the low bid method, it must solicit competitive quotations from all IDC contractors awarded a contract pursuant to a single solicitation for the work required by a delivery order. If one or more IDC contractors decline to provide a quote, the Agency must document that fact. The Agency must receive at least two bonifide bids in order to award a delivery order. The Agency must award the delivery order to the contractor providing the lowest quote. The Agency may make this award using a Construction Services Delivery Order form (SE-680).

On the Delivery Order (SE-680), the 'PROJECT NUMBER' will either be the PIP number of the project for which the Work is to be completed, or the IDC number with a 'phase' suffix e.g., J16-D027-A. The agency must establish delivery order numbers assigned to the contract for its record keeping purposes.

The Agency must be cautious to assure that it has at least three contracts awarded pursuant to a single solicitation with active IDC's. If the Agency only awarded three IDC's originally and it has already awarded one of the original contractors \$750,000 in delivery orders, the Agency should solicit additional IDC contractors as outlined above.

#### **B. COST GUIDE AND MULTIPLIER OR UNIT PRICES**

##### **1. SINGLE IDC CONTRACTOR**

If the agency has awarded an IDC to a single contractor, it may award delivery orders to that contractor using the pricing method specified in the IDC. However, if the contractor proposes to provide the work at a price less than that calculated under the method prescribed in the IDC, the Agency may use the lower price if it includes in the file written documentation that the price is indeed lower.

Before issuing the delivery order, the Agency should take in order the following steps:

- 1) Determine for itself what the scope of work is and which Cost Data Guide unit prices should be used to price the work;
- 2) Meet with the contractor to develop a written scope of work; and
- 3) Agree with the contractor in writing on the Cost Data Guide unit prices applicable to the scope of work.

After taking these steps the Agency may issue a delivery order for the work which includes the agreed upon scope of work and Cost Data Guide unit prices applicable to that scope of work.

Before an agency issues a delivery order where more than 20% of the work is not covered by unit prices in the Data Guide or Unit Prices bid by the contractor, the agency should determine whether the scope of work is within the scope of the solicitation for ID construction services. If not, the agency should not issue a delivery order for the work under that IDC. If the Agency determines that the proposed delivery order is within the scope of the solicitation for IDC construction services and decides to proceed using an ID contractor selected under the solicitation, the agency must solicit competitive quotes on the work from multiple ID contractors. The quote provided by each ID contractor should be divided to separate work covered by the Cost Guide or bidder's unit prices and work not covered. The covered work should be priced at or below the value derived by applying the contractor's multiplier to the Cost Guide price or applying the contractor's unit prices for the covered work.

##### **2. MULTIPLE IDC CONTRACTORS**

If an agency has awarded multiple contracts for the same contractors license category or subcategory, it must meet its obligations to each to provided the minimum amount of work guaranteed in each contract. If the agency has awarded multiple contracts, it may provide each contractor a fair opportunity to receive delivery orders under the IDC by the use of competitive bidding among the various IDC contractors for an individual Delivery Order. However, if competitive bidding is used, each Indefinitely Delivery Contractors price should not exceed the price obtained using their multiplier or unit prices bid. If competitive bidding is not used, the price of a delivery order must be determined in the manner set forth in B(1) above.

#### **C. DELIVERY ORDER FORM**

The Agency may award a delivery order using a Construction Services Delivery Order form (SE-680). On the Delivery Order, the 'PROJECT NUMBER' will either be the PIP number of the project for which the Work is to be

completed, or the IDC number with a 'phase' suffix. The agency must establish delivery order numbers assigned to the contract for its record keeping purposes.

The Agency should amend delivery orders using Form SE-690. The Agency shall price any amendment in the same manner as the price for the original delivery order unless the parties based the original delivery order price on competitive quotes. In the case where the parties based the original delivery order price on competitive quotes, the Agency must use the method prescribed in the IDC for pricing delivery orders.

### **9.3.7 PERFORMANCE AND PAYMENT BONDS**

The Agency must obtain Performance Bonds and Labor & Material Payment Bonds in the amount of 100% of the Delivery Order amount for all Delivery Orders exceeding \$50,000. The Agency may require bonds on Delivery Orders under \$50,000.

### **9.3.8 QUARTERLY REPORTS**

The Agency must submit to OSE quarterly reports on IDC contracts. Each report must contain the following:

1. IDC project number;
2. Delivery Order number for each Delivery Order issued under the IDC;
3. Brief description of work for each Delivery Order;
4. Date of OSE Building Code approval for each Delivery Order;
5. Flood Plain Community Number and Panel Number each Delivery Order;
6. Date of Flood Hazard Area Permit if applicable for each Delivery Order;
7. If Agency pays delivery order fees out of a PIP, the PIP project number from which fees are paid;
8. If Agency does not pay delivery order fees out of a PIP, identify source of funds;
9. Total fees paid per Delivery Order.