

CHAPTER 8

MISCELLANEOUS PROCUREMENTS

8.1 RELATED STATUTORY AUTHORITY

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

8.2 TYPES OF MISCELLANEOUS PROCUREMENTS

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

8.3 SMALL PURCHASES

- 8.3.1 **Protest Rights:** Protest rights do not apply to contracts \$50,000 or less. Contracts over this amount that are awarded under the Small Purchase procedures set forth in this section are protestable; however, they immediately go into effect upon posting of the Notice of Award (SE-375). Do not use the Notice of Intent to Award (SE-370) on Small Purchases.
- 8.3.2 **Limits for Small Purchases:**
 - A. Small purchases are limited to an amount of \$100,000 or less.
 - B. Each Agency may have additional internal procedures that further limit the authority to make small purchases. The Agency's internal procedures should be verified with their procurement officer.
- 8.3.3 **Competition Requirements:** The specific requirements on the Agency to obtain competition for small purchases depend on the amount of the awarded contract or purchase order.
 - A. PURCHASES OF \$10,000 OR LESS:
 - 1. Agency may make small purchases with a total cost of \$10,000 or less without getting competitive quotes.
 - 2. The Agency should distribute these purchases equitably among qualified suppliers. Unless it is impractical, the Agency should solicit bids from other suppliers before giving the previous supplier a repeat order.
 - 3. The Agency should make the purchase on a purchase requisition form provided by the Agency's procurement officer.
 - 4. The procurement officer or his designee must annotate the purchase requisition with the words "Price is fair and reasonable" and sign it.
 - 5. The Agency is only required to verify the reasonableness of the price when the procurement officer of the Agency suspects that the price may not be reasonable, e.g., by comparison to the previous price paid or personal knowledge of the item involved.

B. PURCHASES OVER \$10,000 BUT LESS THAN \$100,000:

1. For construction, the Agency may make written requests for written quotes from a minimum of three qualified sources and receive bona fide responsive and responsible quotes from three sources; or the Agency may provide adequate public notice in South Carolina Business Opportunities (SCBO).
2. The advertisement for written quotes in SCBO should be listed under the “Minor Construction” section.
3. The Agency must award to the lowest responsive and responsible source. (See Chapter 6 for more information on the evaluation of a bidder’s responsiveness and responsibility.)
4. The Agency should make the purchase on a purchase requisition form with the following attached in the Agency file:
 - a. A copy of the written solicitation and written quotes; and
 - b. A statement documenting that the procurement is to the advantage of the State (price and other factors considered), including the administrative cost of the purchase.

8.3.4 Special Requirement for Purchases Over \$50,000 but Less Than \$100,000:

- A. The Agency will use the Invitation for Minor Construction Quotes (SE-311) as the written request for quotes, whether soliciting quotes directly from contractors or advertising in SCBO.
- B. The Agency will create Project Documents using the Table of Contents – Minor Construction in Appendix B.3 that lists the forms that must be included.
- C. Projects Exceeding Agency’s Basic Authorization of \$50,000.
 1. Advertising in SCBO: The Agency will submit the completed SE-311, pages 1 & 2 and project documents to the OSE Project Manager for review and approval. The OSE Project Manager will send the approved SE-311 to SCBO for advertisement and forward a signed copy to the Agency. The Agency must include the signed SE-311 in the project documents.
 2. Directly Soliciting Quotes from 3 or more Contractors: The Agency will submit the completed SE-311, pages 1 & 2 and project documents to the OSE Project Manager for review and approval. The OSE Project Manager will send the approved SE-311 to the Agency. The Agency will include the signed SE-311 in the project documents and distribute them to qualified contractors.
 3. Posting Notice of Award: After determining the lowest responsive and responsible source, the Agency will send the Notice of Award (SE-375) along with a copy of all quotes to OSE for approval. OSE will send the Agency the approved copy of the SE-375, which they will post at the location indicated in the Invitation. These contracts are immediately effective upon posting the SE-375 and the Agency may direct the contractor to start work even though the time to protest the award has not passed.
- D. Projects Within the Agency’s Construction Contract Certification.
 1. Advertising in SCBO: The Agency will complete the ad online at <https://scbo.sc.gov/advertise> and must provide a link to a completed pdf of the SE-311, page 1, in the Description of Project in the SCBO ad.
 2. Directly Soliciting Quotes from 3 or more Contractors: The Agency will distribute the project documents to qualified contractors to submit written quotes.
 3. Posting Notice of Award: After determining the lowest responsive and responsible source, the Agency will post the SE-375 at the location indicated in the Invitation. These contracts are immediately effective upon posting the SE-375 and the Agency may direct the contractor to start work even though the time to protest the award has not passed.
- E. The Agency will complete and sign the Minor Construction Contract (SE-377) and send it to the contractor for execution and securing bonds.
- F. Before starting work on the project, the Contractor shall provide the Owner with an executed contract, Performance and Payment Bonds, each in an amount of 100% of the Contract Price, and the required certificate of insurance.

8.3.5 Agencies should not use the Small Purchase procedures when the anticipated award price is greater than approximately \$90,000. In the event the lowest responsive and responsible bid is greater than the \$100,000 small purchase limit, the Agency will be required to cancel the solicitation and re-bid using the competitive sealed bidding process described in Chapter 6.

8.4 SOLE SOURCE PROCUREMENTS

8.4.1 Agency's Authorization of Sole Source Procurements:

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

8.4.2 Advertising Sole Source Procurements

- A. Public notice of the intent to award without competition must be advertised in South Carolina Business Opportunities for all Sole Source procurements.
 - 1. Contracts with a total potential value greater than \$50,000 must be posted for at least 5 business days before entering a contract.
 - 2. Contracts with a total potential value greater than \$250,000 must be posted for at least 10 business days before entering a contract.
- B. The notice must contain a statement with the right to protest under Section 11-35-4210(1).
- C. Exception: Public notice is not required if the chief procurement officer, after consultation with the head of the purchasing Agency, determines in writing that award without such notice is in the interest of the State.

8.4.3 OSE Code Review:

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

8.4.4 Basis and Procedure for Sole Source Procurements:

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

8.4.5 Bid Security, Bonds and Insurance for Sole Source Procurements:

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

8.4.6 Change Orders or Amendments to Sole Source Procurements:

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

8.4.7 Reporting Sole Source Procurements:

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

8.5 EMERGENCY PROCUREMENTS

8.5.1 Agency Authorization of Emergency Procurements

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

8.5.2 Advertising Emergency Procurements

- A. Notice of award of Emergency Procurements with a total or potential value greater than \$50,000 shall be posted in South Carolina Business Opportunities as soon as practicable thereafter.
- B. The notice must contain a statement with the right to protest under Section 11-35-4210(1).

8.5.3 OSE Code Review

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

8.5.4 Permanent Improvement Project Approval

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

8.5.5 Basis and Procedure for Emergency Procurement

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

8.5.6 Emergency When Competitive Sealed Bidding is Unsuccessful

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

8.5.7 Bonds and Insurance

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

8.5.8 Change Orders or Amendments to Emergency Procurements

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

8.5.9 Reporting Emergency Procurements

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