



Construction Procurement – How is it different from Goods & Services?

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What is Construction?

- § 11-35-310(7)

"Construction" means the process of **building, altering, repairing, remodeling, improving, or demolishing** a public infrastructure facility, including any public structure, public building, **or other public improvements of any kind** to real property.





Procurement Provision That Apply to Construction But Not Goods & Services

- Article 9 of the Consolidated Procurement Code applies to Construction
- The Manual for Planning and Execution of State Permanent Improvement Projects (the “Manual”)– 11-35-830 & 11-35-3240





Non-Procurement Laws Affecting Construction Procurement

(And sometimes Non-Construction Procurements)

- Title 40: Professions and Occupations
 - Chapter 3: Architects
 - Chapter 10: Fire Protection Sprinkler Systems Act
 - Chapter 11: Contractors
 - Chapter 79: South Carolina Alarm System Business Act





Non-Procurement Laws Affecting Construction Procurement

(And sometimes Non-Construction Procurements)

- Building Codes:
 - Title 10, Chapter 10, Sect. 180 for State Agencies;
 - Title 59, Chapter 23, for School Districts; and
 - Title 6, Chapter 9 for everyone else





So you have a project, what is the first step in procuring the construction?

- Choose a project delivery method (11-35-3005 & 11-35-3010)
- The Chosen Method “must be that method which is most advantageous to the State and results in the most timely, economical, and successful completion of the construction project.
- Supported by Written Determination
- Determination submitted to and approved by the State Engineer





Determination

Manual Chpts. 3.1, 3.2 & 3.3

- Factors to Consider:
 - Schedule,
 - Project Financing,
 - Advantages & Disadvantages of available delivery methods,
 - In-house decision making/administrative abilities or extent to which these can be assigned to others by contract





Determination

- Address source selection method 11-35-3015
- Address additional procurement procedures applicable to procurement
 - Pre-qualification 11-35-3023
 - Additional procedures for Design-Build 11-35-3024
- Address Performance Security 11-35-3030 & 11-35-3037





Lets Assume You Chose Design- Bid-Build





DETERMINATION TO USE DESIGN-BID-BUILD

Agency Name:

Project Name:

Project No:

Regarding the above referenced project, I have determined as follows: [1] **Design-bid-build** is the appropriate project delivery method, as provided by Regulation 19-445.2145(B)(3). [2] **Competitive sealed bidding** is the appropriate source selection method, as provided by Section 11-35-3015(2)(b). [3] No additional procurement procedures, as addressed in Sections 11-35-3023 and 11-35-1024(2)(c), will be utilized. [4] **Bonds or a certified cashier's check**, as provided in Section 11-35-3030 and Regulation 19-445.2145(C), will be required based on the project delivery method.

Consistent with Paragraph 3.1.5 of the Manual for Planning and Execution of State Permanent Improvements, Part II, this written determination was automatically approved.

By: _____

(Agency Head)

Date: _____





Next Step?

Hire the Architect-Engineer





Procuring Architect-Engineer Services

- 40-3-300 (i.e. Licensing Law) Prohibits Architects from competing on price
- On State projects, A-E services must be procured following procedures set forth in 11-35-3210 through 11-35-3245, i.e. Qualification based selection. See the Manual Chpt. 4





Procurement Code Does Not Address Posting Notice of Award for A-E

- Without formal notice process, notice is occurs upon actual notice –
 - Protest Rights Start with Actual Notice
- Therefore, Manual provides for a formal notice process





Execution of A-E Contract

- On state projects, contracts $>$ \$25,000 not final until approved by OSE
 - Note: small contracts must be submitted to OSE for information only





Design Phase

- Building Code Review of Plans and Specifications
 - OSE reviews
 - Schematic Design and
 - Construction Document
 - OSF Reviews
 - Schematic Optional
 - Design Development Documents
 - Construction Documents
 - Most Building Departments Only Review Construction Documents





Specifications Prepared by Architects

Must be Non-Restrictive: 11-35-2750





Next Major Step

Construction Services Procurement – Competitive Sealed Bidding

Does 11-35-1520 Apply?





The following sub-sections of 11-35-1520 Apply

- (1) Condition for Use
- (2) Invitation for Bids
- (3) Notice
- (4) Receipt and Safeguarding of Bids
- (5) Bid Opening





The following sub-sections of 11-35-1520 Apply

- (7) Correction or Withdrawal of Bids
- (8) Discussion with Bidders
- (9) Tie Bids
- (13) Minor Informalities and Irregularities
in Bids





Sections of 11-35-1520 superseded by Article 9

- (6) Bid Acceptance and Bid Evaluation (See 11-35-3020(b))
 - Subcontractor listing
- (10) Award (See 11-35-3020(c))
 - Notice of Date and Location of Posting
 - Must Wait 10 if > \$50,000
 - If only on bid must still Post but do not wait
- (11) Request for Qualifications (See 11-35-3023)





Provisions of Article 9 Modifying Competitive Bidding Under Article 5

- 11-35-3020(d) Negotiations after Unsuccessful Competitive Sealed Bidding supersedes 11-35-1540
- 11-35-3021 Subcontractor Substitution
- 11-35-3030 Bond & Security
- 11-35-3035 Errors and Omissions Insurance
- 11-35-3040 Contract Clauses and their Administration





Provisions of Article 9 Modifying Competitive Bidding Under Article 5

- 11-35-3245 Architect-Engineer, or
Construction Manager Performance of
Other Work





Provisions Affecting Contract Administration

- 11-35-3070 Approval of Changes
- Title 29, Chapter 6 – Payment to Contractors, Subcontractors, and Suppliers
 - Time and manner of making payment to contractors and subcontractors 29-6-30
 - Interest on Late Payments 29-6-50
 - Labor and Material Payment Bond 29-6-250



