

CHAPTER 11
CONSTRUCTION MANAGEMENT AT RISK
SUB-CHAPTER 11.1
SELECTING A CONSTRUCTION MANAGER AT-RISK
COMPETITIVE SEALED PROPOSALS

11.1.1 DEFINITIONS – *SC Code Ann § 11-35-2910(3) & (5)*

- A. “Construction ~~management~~Management at-risk” ~~(Risk)~~ (CM-R), also known as Construction Management – Constructor) (CM-R) ~~is/~~is a project delivery method in which the Agency awards separate contracts, one for architectural and engineering services to design the project and the second to a construction manager at-risk for both construction management services and construction of the project facility according to the design. The construction manager at-risk is normally hired at or shortly after the time the architect/engineer is hired and starts providing construction management services at that time. A decision and request to hire a construction manager at-risk after completion of a significant percentage of the design eliminates major potential benefits of CM-R and will be evaluated by OSE accordingly for the best interest of the State but not to unduly limit competition.
- B. “Construction management services” are the provision of the management activities required to plan, schedule, coordinate, and manage the design and construction plan of a project in a manner that contributes to the control of time, cost and quality of construction. CM services typically include oversight of the following:
1. Project Schedules,
 2. Project Cost Control,
 3. Constructability of the Project,
 4. Project Management,
 5. Building Technology (e.g., building materials, equipment and systems),
 6. Bidding and Negotiation of Construction Contracts, and
 7. Construction.

11.1.2 SPECIAL CONSIDERATIONS FOR CM AT-RISK – *SC Code Ann § 40-11-320 and Regs. 19-445.2145(N)*

- A. Firms seeking CM-R work must be registered both as a construction manager and as a general contractor with the SC Contractor’s Licensing Board. The construction manager at-risk’s General Contractor’s license must have a license group designation that will allow the construction manager at-risk to provide 100% Performance and 100% Labor and Material Payment Bonds for the entire project.
- B. The fees awarded to both the A/E and the construction manager at-risk (for the professional services portion of the construction manager at-risk’s services) must represent fair and equitable compensation for the actual services required of each. The form and amount of compensation to the construction manager at-risk for the construction portion of the construction manager at-risk’s services must reflect the degree to which the Agency and the CM ~~C-R~~ [not defined in 11-35-2910] share the risks and rewards of project cost overruns and under-runs.
- C. Construction phase services are subject to the limitations on retainage in SC Code § 11-35-3030(4).

11.1.3 NOTES CONCERNING CONSTRUCTION MANAGER – AGENT (also called Advisor)

SC Code Ann § 11-35-2910(2) and § 11-35-3210

- A. Unlike a construction manager at-risk, a Construction Manager Agent (CM/A) only contracts to provide construction management services and does not assume any of the responsibility or risk for construction of the project.
- B. The Procurement Code treats CM/A as a construction related professional service subject to the qualification based selection requirements of the Procurement Code. Therefore, an Agency wanting to procure the services of a CM/A must use the procedures outlined in Chapter 4 of this Manual.

11.1.4 SOURCE SELECTION METHOD - SC Code Ann § 11-35-3015(3)

- A. The Procurement Code provides that the construction manager at-risk may be selected using either competitive sealed bidding or competitive sealed proposals. However, the use of competitive sealed bidding would require substantially complete design documents and a significantly late selection of the construction manager at-risk. Such an approach would so negate many of the primary benefits normally supporting a determination to use the CM-R project delivery method that it is hard, if not impossible, to imagine a determination that meets statutory and regulatory requirements calling for such an approach. Moreover, the industry standard is for an early selection of the construction manager at-risk using competitive sealed proposals. Therefore, this document assumes an early selection of the construction manager at-risk and only considers using the competitive sealed proposal source selection method.
- B. The competitive sealed proposal source selection method is referred to throughout this document as the Request for Proposal (RFP) process. and as discussed herein will consist of a two-phase selection process in accordance with SC Code Ann §11-34-1530, §11-35-3023(A) and §11-35-3024.(which includes both the Request For Qualifications (RFQ) and RFP procedures).

11.1.5 ORGANIZATIONAL STRUCTURE AND STAFFING FOR CONDUCTING THE RFP PROCESS

SC Code Ann §§ 3024(4) and Regs 19-445.2095(G)

A. ORGANIZATIONAL STRUCTURE

1. The organization consists of ~~a—the Agency Procurement Officer (usually the Agency’s Project Manager), an appointed selection committee that will evaluate the proposals—and a final, a technical advisor(s), the Official approval authority (the Agency Head or a designee), and/or governing board) and anyone else appointed to the selection process.~~
2. Collectively, these individuals and groups constitute the Selection Team Members. The Selection Team includes anyone with access to an opened proposal or other source selection information and in addition to those listed above includes, anyone invited to attend oral presentation, reference- qualifiers, and negotiators and any qualified Consultant retained for this process.
[Commentary: (1) The Agency Procurement Officer is the employee designated by the Agency as the individual primarily assigned and responsible for the conduct of the procurement of CM-R services. (2) The Consolidated Procurement Code does not use the term “Project Manager.” However, a Project Manager (authorized representative) may be the Procurement Officer if the Agency designates him/her to be the Procurement Officer. This document uses the term Procurement Officer throughout to be consistent with the Consolidated Procurement Code. (3) The Procurement Officer is responsible for assuring the Agency’s procurement of CM-R services complies with the Procurement Code.]
- 2.—~~The Selection Committee is composed of a non-voting Chair appointed by the State Engineer and voting and non-voting members appointed by the Agency, as set forth in Part C below.~~
- 3.—~~(Selection Team Members) may assist the Agency Procurement Officer in developing the Selection Plan. The Selection Committee assists the Agency Project Manager in developing a Selection Plan, and evaluating evaluates and ranks statements of qualifications and proposals in accordance with the Selection Plan, RFQ, and the RFP.~~
- 4.—~~The Selection Committee is also responsible for the preparation of report(s) on the evaluation results.~~
- 5.—~~The Selection Committee reports to the individual with the responsibility for final Agency approval of the selection.~~

B. SPECIFIC RESPONSIBILITIES

1. Agency Head or his/her designee: ~~The Agency Head,~~ (approval authority), acting as the final selection authority, is responsible for the following:
 - a. Directing the Agency's efforts during the entire source selection process.
 - b. Reviewing and approving of the Selection Plan (including ranking criteria) and the Request for Proposals (RFP).
 - c. Appointing the members of the Selection Committee, other than the Chair—(OSE must concur with the proposed Committee Team membership).
 - d. Reviewing and approving the schedule of all actions required from receipt of proposals to signing of the contract. (Note: this schedule is not intended to unduly limit competition).
 - e. Providing the Selection Committee with appropriate guidance and special instructions as may be necessary for conducting the evaluation and selection process including approving the evaluation factors and weights assigned.
 - f. Reviewing and approving the Selection Committee’s competitive range determination for the construction manager at-risk’s pre-construction phase management fee and construction phase fee, if

any.

- g.** Reviewing and approving the Selection Committee's final report and selection. The Agency Head may choose to reject the Committee's ~~choice, but such action will require a new procurement.~~ final choice by directing the Procurement Officer to cancel the solicitation prior to award in accordance with the procedures set forth in Regulation 19-445.2097(B).

2. Agency ~~Project Manager~~ Procurement Officer: Subject to the policies and procedures of a specific agency, the ~~Project Manager~~ Procurement Officer is responsible for the following:
 - ~~a.~~ Preparing and submitting ~~a draft of the~~ elected Selection Plan to the ~~Selection Committee for its review.~~
 - ~~b.a.~~ ~~Preparing and submitting the final Plan to the~~ Agency Head and the Office of State Engineer for approval.
 - b. Assuring that each Selection Team Member and any other appointed participant who may be given access to source selection information, signs and returns an SE-414, Confidentiality & Conflict of Interest Policy, before they are provided access to source selection information.
 - c. Posting notices of all selection committee meetings in accordance with the Freedom of Information Act (FOIA) open meeting requirements.
 - ~~e.d.~~ Preparing the Request for Proposals RFQ and/or RFP outline, with the assistance of assigned program and/or technical personnel.
 - ~~e.e.~~ Coordinating with the Selection Committee, the Agency Head, and ~~the~~ OSE on the preparation and issuance of the RFQ and/or RFP.
 - ~~e.f.~~ Issuing any amendments to the RFQ or RFP in conjunction with the OSE ~~approval.~~
 - ~~f.g.~~ Conducting pre-proposal conferences in accordance with established procedures ~~.,~~ meeting minutes and attendance.
 - ~~g.h.~~ Preparing South Carolina Business Opportunities (SCBO) announcements.
 - ~~h.i.~~ Safeguarding ~~classified or other sensitive~~ confidential information and materials, including proposals and amendments.
 - ~~i.j.~~ Conducting or coordinating cost or price analyses and documenting the results.
 - ~~j.k.~~ Participating as a voting member of the Selection Committee.
 - ~~k.~~ ~~Promptly notifying all offerors eliminated from the competition.~~
 - l. Determining contractor offeror responsiveness and responsibility.
 - m. Conducting or controlling all discussions and negotiations with offerors.
 - n. Maintaining written records of all discussions and negotiations with offerors.

- o. Requesting best and final offers.
 - p. Preparing the Selection Committee's report and recommendation to the Agency Head.
 - q. Taking all necessary contractual actions.
 - r. Conducting the debriefing of unsuccessful offerors after the posting of the Notice of Intent to Award.
 - s. Maintaining all required records produced by the Committee including written records, rankings and pertinent emails.
3. Selection Committee Chair:— The Selection Committee Chair is a non-voting member appointed by the State Engineer. The Committee Chair's duties include the following:
- a. ~~Scheduling and~~Coordinating the scheduling of and assisting in conducting Committee meetings and deliberations.
 - b. Providing overall supervision, planning direction, and execution of the Committee's activities.
 - c. ~~Completing~~To the extent permitted by Agency planning and activities, completing the Committee's responsibilities within the prescribed period established in the Agency Plan.
 - d. Making final determinations of responsiveness on individual proposals.
 - e. ~~Approving all competitive range determinations. The Chair may add offerors to the competitive range, but shall not remove them except for reasons of non responsiveness.~~
 - f. ~~Supporting the Agency Head to the fullest extent possible by conducting intermittent in process reviews as required.~~
 - g.e. Summarizing the raw evaluation data.
 - h.f. Assisting the Agency ~~Project Manager~~Procurement Officer in debriefings to the extent requested.

C. COMMITTEE MEMBERSHIP

1. The Selection Committee should normally be composed entirely of State employees. For the purposes of selection, members of Agency Boards, acting in their official capacity, are State employees.
2. The Committee should be comprised of a minimum of five voting members.
- 2.3. The State Engineer or his designee must concur in all RFP selection committee appointments.
- 3.4. Committee members must sign ~~nondisclosure and conflict of interest statements~~an SE-414, Confidentiality & Conflict of Interest Policy.
- 4.5. ~~There are no rules on which employees may be~~The Committee should be comprised of a minimum of five voting members. The Agency appointed members should consist of to a committee. The following is one possible committee structure:
 - a. ~~One member~~A designee of the board or commission, ~~if any,~~ governing the Agency;
 - a. ~~A designee of the Agency or a designee of such board or commission;~~
 - b. ~~The agency head (secretary, executive~~Secretary, Executive director, ~~president~~President, or like officer) ~~or his designee; from a Governmental Body);~~

- c. One representative of the division, department, or ~~program~~ Program Agency for which the project is being built;
- d. Agency ~~project manager~~ Procurement Officer; and
- e. Agency facilities director or his designee.

~~If different than any of the above, the Agency may appoint the following additional~~ Commentary: Ideally, a selection committee will not include both a supervisor and someone he/she supervises.

5.6. Other possible members, as either voting or non-voting members are:

- a. Agency construction director or his designee;
- b. Agency engineering and planning director or his designee;
- c. Agency physical plant director or his designee; and
- d. Other Agency technical staff as appropriate to the project *

~~*Note~~ Commentary: Normally, the Agency will appoint technical members with expertise in various aspects of the project. ~~-The number of technical members appointed for a particular procurement depends upon the circumstances of the procurement (e.g., types of expertise needed and number of proposals anticipated)-.~~]

D. TECHNICAL ~~Advisors~~ ADVISORS

- 1. The Agency Head should appoint outside technical advisors with special expertise not available on the Selection Committee but essential to the selection process.
- 2. Advisors must sign ~~nondisclosure and conflict of interest statements~~ an SE-414, Confidentiality & Conflict of Interest Policy.
- 3. The Agency should use Advisors in discrete areas such as reviewing technical aspects of proposals to assure compliance with the technical requirements of the RFP. The Agency should not give Advisors access to information concerning overall Committee activities that they do not need to perform their advisory duties and should not attend Committee meetings unless specifically requested by the Committee Chair.

E. CHANGES IN SELECTION COMMITTEE MEMBERSHIP

An Agency may only make changes in the makeup of the selection committee with the approval of the Agency Head and the OSE.

11.1.6 CONFLICTS OF INTEREST ~~SC Code Ann §§ 8-13-700, 725, 760, & 775~~

- ~~A. Using the SE 414, CM-R Selection Committee Confidentiality and Conflict of Interest Policy, the Chair of the Selection Committee must instruct the committee members and technical advisors of the Procurement Code's requirements for ethical conduct, and require each member to sign a statement that he has read and understands those standards of conduct and that he does not have an actual or apparent conflict of interest relating to the proposed acquisition.~~
- ~~B. If an evaluator has an actual or apparent conflict of interest related to a proposal under evaluation, the Chair must remove that evaluator and, if a sufficient number of evaluators do not remain, replace him with another.~~

11.1.7 SELECTION PLAN FOR THE RFQ/RFP PROCESS

~~A. Definition~~

A. DEFINITIONS

1. The Selection Plan (Plan) is the document that explains how the Agency will solicit statements of qualifications and proposals from contractors and evaluate those statements and proposals in order to make the selection decision. It outlines how the Agency will conduct negotiations. It identifies who will do the evaluating (i.e., it identifies the Chair and members of the Committee). ~~The Plan establishes milestone dates for the completion of the selection process.~~
2. The Plan is, in short, the Agency's statement to itself and to others as to how it intends to acquire what it needs. It distinguishes what is important from what is not and, by assigning weights, defines how important these distinctions are.

~~Note: If the Agency, in its OSE approved written determination of project delivery method (see Chapter 3, Sub-Chapters 3.1, 3.2 and 3.3) determined to pre-qualify offerors pursuant to SC Code Ann § 11-35-3023(A), the Agency will need to include in its Selection Plan an outline of how it intends to prequalify offerors.~~

~~B. Minimum Requirements~~

B. MINIMUM REQUIREMENTS

The Plan must include the following, as a minimum:

1. Description of property or services to be acquired.
2. Description of Committee structure and the duties and responsibilities of each element of the organization. Include the nominations for Committee by attaching a roster of personnel by name, title, and agency to the plan.
3. Schedules and agenda for the Committee and key events or milestones that will occur between the time the Selection Committee is organized and its adjournment.
4. Proposed pre-solicitation activities such as the issuance of a draft solicitation or convening a pre-solicitation conference or pre-proposal conference.
5. Solicitation plan (i.e. advertising plan).
6. Summary of the acquisition strategy including an explanation of the type of contract to be used, the proposed contract form, and the nature of any special features to be included in the contract.
7. Statement of the proposed evaluation factors and their relative importance.
8. Description of the evaluation process, methodology, and techniques including an explanation of the approach to selection.

9. Description, for "in-house" use, of the methodology that evaluators will use to express their judgment of the degree of merit each proposal possesses in relation to the announced evaluation factors including the scoring system evaluation or ranking criteria the committee will use in the evaluation.

10. Schedule of significant project milestones.

C. PREPARATION AND APPROVAL OF THE PLAN

1. The ~~Project Manager~~Procurement Officer prepares the Plan with the assistance of the responsible program and technical officials.
2. The Committee ~~must~~may review the plan and ~~the Agency Head and the~~ OSE must approve the final plan before the Agency issues a solicitation or holds any pre-solicitation conference.

D. ~~Solicitation Plan~~SOLICITATION PLAN – *SC Code Ann § 11-35-1530(2) & § 11-35-1520(3)*

1. The Consolidated Procurement Code requires adequate public notice of the invitation for bids.
2. This notice (advertisement) must include publication in South Carolina Business Opportunities (SCBO). However, the Procurement Code recognizes that this alone may not constitute adequate public notice. Therefore, the Agency needs to develop a solicitation plan that provides adequate public notice for real competition on the project at hand.

3. The plan must describe how the Agency will advertise for proposals (or in the case of prequalification, statements of qualification) and/or how the Agency intends to develop interest in the project other than through advertising in SCBO.
4. The plan must also set forth the minimum number of days that the Agency will advertise the project.

11.1.8 PRE-7 REQUESTS FOR QUALIFICATION — THE REQUEST FOR STATEMENTS OF QUALIFICATION* RFQ*(I.E. PREQUALIFICATION) SC Code Ann § 11-35-3023(A)

- A. When the Agency selection plan provides Agencies may request approval from OSE to limit participation in a solicitation for short listing of CM-Rs through R to those businesses that are prequalified.
- B. To pre-qualify offeror's, the Agency must determine in writing that pre-qualification is justified due to the nature of the project and OSE has approved because the cost of preparing proposals is high in view of the size, estimated price, and complexity of the project.
- C. The Agency must submit the determination to OSE for approval. The determination for pre-qualification, the Agency must work under OSE's supervision to pre-qualifying bidders, may be included in the written determination of project delivery method discussed in Sub-Chapter 3.1. If OSE approves pre-qualification of offerors, OSE must supervise the pre-qualification process.
- D. ~~11.1.9~~ The decision to not pre-qualify a particular firm is protestable. The standard of review is the same as for a determination of non-responsibility. See SC Code Ann § 11-35-2410
- E. If only one prospective offeror is qualified, the prequalification process must be canceled. In this event, the Agency may start the process over or publicly advertise a request for proposals from all interested parties.
- F. THE REQUEST FOR ~~PROPOSAL (RFP)~~ QUALIFICATIONS (RFQ)
 1. The Agency must prepare a RFQ that will clearly communicates to potential offerors both the Agency's needs and the evaluation factors the Selection Committee will use in the evaluating a business's qualifications. The RFQ should not include the Selection Plan.
 2. The RFQ must:
 - a. Contain a description of the general scope of work to be acquired.
 - b. Advise prospective offerors how they may apply for consideration including how their statements of qualifications should be organized and arranged.
 - c. Inform potential offerors of the evaluation factors that the Agency will consider in evaluating statements of qualifications and their relative importance. The evaluation factors should at a minimum include:
 - A. Prior performance
 - B. Recent/past references on all aspects of performance.
 - C. Financial stability, and
 - D. Experience on similar construction projects.
 - d. Inform potential offerors of minimum requirements that apply to particular evaluation factors and significant sub-factors.
 - e. Set forth the deadline for submission of statements of qualifications.

G. ADVERTISING – SC Code Ann § 11-35-150(2) & § 11-35-152(3)

The Agency must advertise the RFQ in accordance with the solicitation plan included in the approved Selection Plan. This includes providing adequate notice in the manner provided in SC Code Ann § 11-35-152(3) (adequate notice in SCBO).

H. PRE-QUALIFICATION/PROPOSAL CONFERENCES – SC Code Ann Regs 19-445.2095(H)(1)

1. The Agency may conduct a pre-qualification/proposal conference to explain the project and RFQ to interested firms. Conducting a pre-qualification/proposal conference at the RFQ stage will allow the Agency to gauge interest in the project, and solicit input from potential offerors regarding how best to address complex aspects of the project thus promoting competition.
2. When the Agency determines that a pre-qualification/proposal conference is in its best interest, the Agency must notify all firms receiving RFQs and advertise the conference in SCBO. The Agency must give adequate notice to prospective offerors so that all who wish to attend may arrange for representation. The notice must define as explicitly as possible the nature and scope of the conference.

A. The Solicitation

3. At the pre-qualification/proposal conference, the Agency must furnish all prospective offerors identical information in connection with the proposed acquisition. The Agency may not use remarks and explanations at the conference to modify or qualify the terms of RFQ. If the Agency wishes to modify or qualify the terms of the RFQ, it must do so by written amendment. The Agency must make a complete record of the conference and make the record a part of its procurement file.

I. RECEIPT AND OPENING OF STATEMENT OF QUALIFICATIONS

1. The rules governing non-disclosure of procurement and confidential information (Part 11.1.9) applies to the receipt of statements of qualifications.
2. The Agency should date and time stamp statements of qualifications upon receipt; however, unlike proposals the Agency is not required to secure and publicly open statements of qualifications.
3. The Procurement Officer may open statements of qualifications upon receipt and immediately start performing reference checks, etc.

J. EVALUATION AND RANKING OF PROSPECTIVE OFFERORS

1. The Selection Committee meeting must comply with the Open Meeting requirements of law (Part 11.1.16(A)) when ranking prospective offerors.
2. The Selection Committee must evaluate the statements of qualifications and rank prospective offerors from most qualified to least qualified. The Selection Committee should rank firms following substantially similar procedures to those employed for ranking proposals as set forth in Part 11.1.16(B) & (C).
3. The Procurement Integrity provisions of Part 11.1.10 apply to the ranking of potential offerors in the prequalification process.

K. NUMBER OF FIRMS PREQUALIFIED

1. The Agency must solicit proposals from at least the top two ranked prospective offerors by means of a request for proposals. The Agency may solicit proposals from additional prospective offerors in order of ranking.
2. The Agency's determination of how many proposals to solicit is not protestable.

L. NOTIFICATION

1. After ranking prospective offerors and determining which offerors it will solicit proposals from, the Agency must notify prospective offerors as to whether or not they have been pre-qualified.
2. Each prospective offeror is notified individually of their status and is not notified of the status of any other prospective offeror, how many prospective offeror's submitted statements of qualifications or how many prospective offerors were prequalified.

11.1.8 THE REQUEST FOR PROPOSAL (RFP)

A. THE RFP

1. The Agency must prepare a ~~solicitation~~RFP that will clearly communicate to the offerors both the Agency's needs and the evaluation factors the Selection Committee will use in the evaluating the proposals. The RFP should not include the Selection Plan.
- ~~2. The solicitation should not include the Selection Plan.~~
- ~~3.~~2. The solicitationRFP must:
 - a. Advise prospective offerors on how their proposals should be organized and arranged.

- b. Provide that offerors must submit the technical and price or cost portions of their proposals in separate sealed envelopes.

- c. Inform offerors of the evaluation factors for award and information on the source selection system the Agency will employ including a statement of all significant factors and sub-factors (including price) ~~which that~~ the agency ~~reasonably expects to will~~ consider in evaluating proposals and the relative importance assigned to each of these factors, ~~and~~
 - d. Inform offerors of minimum requirements that apply to particular evaluation factors and significant sub-factors.
- B. ~~Advertising~~ ADVERTISING** – *SC Code Ann § 11-35-1530(2) & § 11-35-1520(3)*
~~The~~ ~~Unless the Agency prequalified offers, the~~ Agency must advertise the ~~solicitation~~ RFP in accordance with the solicitation plan included in the approved Selection Plan.
- C. PRE-~~Proposal~~ PROPOSAL CONFERENCES** – *SC Code Ann Regs 19-445.2095(H)(1)*
~~[Commentary: If the Agency prequalified offerors, only the prequalified offerors are invited to a pre-proposal conference held after the qualification process is complete and the conference is not advertised in SCBO. The discussion below assumes the Agency will not prequalify offeror's.]~~
1. The Agency may conduct a pre-proposal conference to explain or clarify the ~~solicitation~~ RFP and complicated specifications and requirements (e.g., proposal format) to ~~interested potential~~ firms. – The Agency should use any such conference to eliminate misunderstandings that may arise from misinterpretation, complexity, errors, omissions, or other deficiencies.
 2. When the Agency determines that a pre-proposal conference is in its best interest, the Agency must notify all firms receiving solicitations and advertise the conference in SCBO. ~~The Agency must give adequate notice to prospective offerors so that all who wish to may arrange for representation. The notice must define as explicitly as possible the nature and scope of the conference.~~
 - ~~3.1. The Agency must give adequate notice to prospective offerors so that all who wish to may arrange for representation. The notice must define as explicitly as possible the nature and scope of the conference.~~
 4. At the pre-proposal conference, the Agency must furnish all prospective offerors identical information in connection with the proposed acquisition.
 - ~~5.3.~~ The Agency may not use remarks and explanations at the conference to modify or qualify the terms of the solicitation and specifications. If the Agency wishes to modify or qualify the terms of the solicitation and specifications, it must do so by written amendment.
 - ~~6.4.~~ The Agency must make a complete record of the conference and make the record a part of its procurement file.

11.1.10-9 NON-DISCLOSURE OF PROCUREMENT AND CONFIDENTIAL INFORMATION

SC Code Ann § 11-35-1530(3) and Regs 19-445.2010 & 2095(C)

- A.** Prior to ~~a contract~~ the issuance of an award or ~~posting of Notice~~ notification of Award, ~~intent to award, whichever is earlier, members of the Selection Team (state personnel participating involved in an acquisition) shall not engage in conduct that:~~
1. ~~Favors one offeror over another;~~
 2. ~~Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;~~
 3. ~~Reveals an offeror's price without that offeror's permission. However, the procurement process officer may not reveal~~ inform an offeror that its price is considered by the State to be too high, or too low;
 4. ~~Reveals the names of individuals providing reference information about an offeror's past performance; or~~
 5. ~~Knowingly furnishes~~ source selection information to ~~any unauthorized person. anyone other than the responsible procurement officer.~~
- B.** “Source selection information” means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly:
1. ~~proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices,~~
 2. ~~source selection plans,~~
 3. ~~technical evaluation plans,~~
 4. ~~technical evaluations of proposals,~~

5. cost or price evaluations of proposals.
6. information regarding which proposals are determined to be reasonably susceptible of being selected for award.
7. rankings of responses, proposals, or competitors.

8. reports, evaluations of source selection panels or evaluation panels,
9. other information based on a case-by-case determination by the Procurement Officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

[Commentary:

- (1) Limitations outlined herein apply to all types of communications addressed in this Part, or Parts 11.1.17 and 11.1.18.
- (2) Prior to posting an award, or intent to award, regulation 19-445.2010(D) prohibits anyone from disclosing either the number of offerors or their identity unless required to do so by law.
- (3) Regulation 19-445.2010(c) allows the responsible procurement officer to authorize certain disclosures in writing.]

- ~~A.C.~~ Anyone receiving a request for information before contract award or posting of Notice of Award must forward the request to the ~~project manager~~Procurement Officer.
- ~~B.~~ Personnel participating in the procurement process may not reveal proprietary information submitted by offerors to any unauthorized person at any time.
- ~~C.D.~~ All personnel who participate in the procurement process must sign an agreement not to discuss or reveal information concerning the process except to an individual participating in the same proceeding, and then only to the extent that the information is required in connection with the proceedings-
- Before the Procurement Officer may share source selection information with a Selection Team member or anyone else, the Procurement Officer must have that person sign and return an SE-414, Confidentiality & Conflict of Interest Policy.

11.1.10 PROCUREMENT INTEGRITY (CONFLICTS OF INTEREST/ETHICS)

SC Code Ann §§ 8-13-700, 725, 760, & 775

D. "Source Selection Information"

- ~~1. Source selection information includes information stored in electronic, magnetic, audio, or video formats, prepared or developed for use by the State to conduct a particular procurement.~~
- ~~2. Source selection information is information that would jeopardize the integrity or successful completion of a particular procurement if someone were to disclose it to a competing contractor.~~
- ~~3. Source selection information is required by statute, regulation or order to be secured in a procurement file or other facility to prevent disclosure.~~
- ~~4. Source selection information is limited to the following:
 - ~~a. Proposed costs or prices submitted in response to an Agency solicitation, or lists of those proposed costs or prices;~~
 - ~~b. Source selection plans;~~
 - ~~c. Technical evaluation plans;~~
 - ~~d. Technical evaluations of proposals;~~
 - ~~e. Cost or price evaluation of proposals;~~
 - ~~f. Information regarding which proposals are determined to be reasonably susceptible of being selected for award;~~
 - ~~g. Rankings of responses, proposals, or competitors;~~
 - ~~h. Reports and evaluations of the selection committee; and~~
 - ~~i. Other information based on a case by case determination of the Agency Head or OSE that its disclosure would jeopardize the integrity or successful completion of the procurement.~~~~

~~E. "Proprietary Information" – Any information submitted to the State by a contractor and designated as proprietary, in accordance with law or regulations, by the contractor.~~

- A. The Chair of the Selection Committee must instruct the committee members of the Procurement Code's requirements for ethical condictions statement.
- B. If an evaluator has a conflict of interest related to a proposal under evaluation, the Chair must remove that evaluator and, if a sufficient number of evaluators do not remain, replace him with another.
- C. If an evaluator has a current or past relationship with the offeror of any kind but does not believe the relationship creates a conflict of interest or is not sure, the evaluator must notify the Selection Committee Chair of the relationship for a determination as to whether or not an actual conflict of interest exist

11.1.11 POTENTIAL OFFEROR'S PARTICIPATION IN A REPORT OR STUDY USED IN PREPARATION OF DESIGN REQUIREMENTS – SC Code Ann § 11-35-3005(3)

- A. Participation in a report or study that is used in the preparation of design requirements for a project does not disqualify a firm from participating as a member of a proposing team in a construction management at-risk project unless the participation provides the business with a substantial competitive advantage.
- B. In analyzing whether a member of a proposing teams participation in a report or study provides that team a significant advantage, one must consider the role the member will play on the team. -Questions to consider are:
 - 1. Is the team member's position on the team significant enough that it will significantly influence the ranking of the team?
 - 2. Did the team member's participation in the report or study give the team member insight into the Agency's requirements that is not provided in the solicitation to all offerors and which could give the team an advantage in preparing its proposal?
 - 3. Did the team member's participation in the report or study give the team member or team the opportunity to start working on a proposal prior to the Agency soliciting statements of qualifications or proposals?
 - 4. What would the average person on the street think if they knew the facts?

11.1.12 RECEIPT OF PROPOSALS - *SC Code Ann Regs 19-445.2095(C) & 2045*

The Agency must time-stamp proposals and modifications upon receipt and hold them unopened (except as otherwise provided in the Procurement Regulations) in a secure place until the established due date.

11.1.13-~~PROPOSAL OPENING AND REGISTER OF PROPOSALS~~ – *SC Code Ann Regs. 19-445.2095(C)*

- A. The Agency's ~~project manager~~Procurement Officer (or designee) must open the proposals publicly in the presence of one or more State witnesses at the time and place designated in the request for proposals.
- B. The person opening the proposals should declare the arrival of the time for receipt of proposals, give his/her name and the names of the witnesses, and record this information on a Register of Proposals.

- C.** The Agency must prepare a Register of Proposals that identifies the project and includes the name of each offeror and the number of modifications received, if any.
- D.** The person opening the proposals and the witness must certify the Register of Proposals in writing as true and accurate.

- E. The Agency may not make the Register of Proposals open to public inspection until after the issuance of an award or notification of intent to award, whichever is earlier.
- F. The Agency must not disclose the contents and the identity of competing offers during the process of opening proposals.
- F.G. If members of the public appear at the opening, the person opening the proposals should state that he/she will conduct the opening of proposals and recording of the names in silence to protect confidential information.

11.1.14 PERMISSIBLE COMMUNICATIONS WITH OFFERORS AFTER PROPOSAL OPENING BUT BEFORE AWARD – SC Code Ann §§ 11-35-1530(6) & (8)

- ~~A. The Chief Procurement Officers have jointly published guidelines for communications with offerors after opening proposals but prior to award. Such discussions include clarification discussions and negotiations. These guidelines are set forth Appendix E of this Manual.~~
- ~~B. This document also addresses Best and Final Offers. The Agency must conduct discussion and any BAFO process in accordance with these guidelines.~~
- ~~C. These guidelines are found in Appendix E of this manual.~~

11.1.15 ~~REJECTION OF PROPOSALS~~ REJECTION OF PROPOSALS AND CANCELLATION OF SOLICITATION

SC Code Ann § 11-35-1530(9) & ~~award~~ 11-35-1710 cancellation

- A. ~~Rejection of Individual Proposals~~ REJECTION OF INDIVIDUAL PROPOSALS – SC Code Ann Regs 19-445.2095(J)
 - 1. The Agency does not need to accept proposals unconditionally without alteration or correction, and to the extent otherwise allowed by law, (see 6.2.15 above), the State's stated requirements may be clarified after proposals are submitted. The Agency must consider this flexibility in determining whether reasons exist for rejecting all or any part of a proposal.
 - 2. Reasons for rejecting proposals include but are not limited to the following:
 - a. The business that submitted the proposal is non-responsible as determined under Section 11-35-1810;
 - b. The proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal ~~has passed~~) fails to meet the announced requirements of the State in some material respect; or
 - c. The proposed price is clearly unreasonable.
 - 3. The Agency must document the reasons for cancellation or rejection and make the documentation a part of the procurement file available for public inspection.
- B. ~~Rejection of Proposals – Cancellation of Solicitation Prior to Award~~ REJECTION OF ALL PROPOSALS – CANCELLATION OF SOLICITATION PRIOR TO AWARD
 - ~~B.~~ SC Code Ann Regs 19-445.2097
 - ~~1.~~ Unless there is a compelling reason to reject all proposals, the Agency, after receiving and opening proposals, must award a contract.
 - ~~2.1.~~ Subject to the provisions of SC Code Ann § 1530, this award must be to the highest ranked responsible offeror.
 - ~~3.2.~~ Should the Agency decide to cancel a solicitation after opening proposals but before award, the Agency must determine in writing that:
 - a. inadequate or ambiguous specifications were cited in the solicitation;
 - b. specifications have been revised;
 - c. the supplies, services, information technology, or construction being procured are no longer required;
 - d. the solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
 - e. proposals received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the proposals were requested;
 - f. all otherwise acceptable proposals received are at unreasonable prices;
 - g. the proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
 - h. for other reasons, cancellation is clearly in the best interest of the State.

4.—If the determination is due to a change in requirements, the Agency must show in its determination that prior to opening, it made every effort to anticipate changes in requirements.

5.3. Any determination to cancel the solicitation must be made in good faith (honesty in fact, fair dealing). *SC Code Ann § 11-35-30, See In Re: Protest of Wometco Food Services, Inc. SCPD 1991-14.*

11.1.16 RANKING OF PROPOSALS

Ranking By 11.1.16 SELECTION COMMITTEE MEETINGS AND RANKING OF PROPOSALS

A. SELECTION COMMITTEE MEETINGS SUBJECT TO OPEN MEETING REQUIREMENTS – SC Code Ann § 30-4-60

1. Every meeting of public bodies must be open to the public unless closed pursuant to SC Code Ann § 30-4-70. A Selection Committee is a body subject to this requirement. Every meeting of the Selection Committee must be publicly announced at least twenty-four hours before the meeting.
2. When a meeting is held to discuss source selection information such as ranking statements of qualifications and proposals, the meeting will open publicly and any item on the agenda which is not protected source selection information will be addressed publicly.
3. Thereafter, the Selection Committee should adjourn to go into executive session to discuss source selection information. The public must be excluded from these executive sessions with no exceptions.

A.B. PROPOSAL RANKING BY INDIVIDUAL ~~Committee Members~~ COMMITTEE MEMBERS

1. Each member of the selection committee must examine each proposal in detail to measure its contents against the established standards for evaluation factors, ~~and assign a score, numerical or otherwise, to each factor.~~
- ~~2.~~ Because ~~numerical scores or other types of grading~~ the ranking method may not convey fully the individual evaluator's judgment of some aspects of the proposal, each evaluator must supplement each ~~rating~~ ranking with a concise narrative evaluation that includes a discussion and interpretation of the limitations of the ~~rating~~ ranking. The narrative should summarize the strong and weak points of each proposal recording what the ~~contractor~~ offeror offered and how the offer met the established requirements, and it summarizes the strong and weak points of what the ~~contractor~~ offeror has proposed.
- ~~3.2.~~ In instances where the ~~contractor~~ offeror has failed to meet a critical requirement, the evaluator assesses what should be done to remedy the deficiency and what the impact of the deficiency (corrected or uncorrected) is on the overall proposal.
- ~~4.3.~~ Each committee member must turn his/her signed evaluation and narrative into the committee chair with a copy to the Agency ~~project manager~~ Procurement Officer.

B.C. ~~Consensus~~ CONSENSUS OF ~~Selection Committee~~ SELECTION COMMITTEE

1. The Selection Committee assigns the final score or ranking for each technical proposal by consensus.
2. After the individual members have separately evaluated the proposals, including preparation of their narrative explanations, the Selection Committee must meet and formulate its collective conclusions. The committee must discuss significant variations in evaluators' scores or assessments of technical merit and resolve discrepancies or fully explain them in the record.
3. The Agency ~~project manager~~ Procurement Officer must prepare for the committee's approval, a narrative justification ~~to~~ of the final score or ranking the committee assigns to each proposal. This narrative justification must demonstrate that the Committee based its final selection on an intelligent and rational judgment of the technical merits of each competing proposal.
4. The committee must attach narrative justification to the final score or ranking it assigns to each proposal.

C. ~~Selection Committee Report and Recommendation~~

D. SELECTION COMMITTEE REPORT AND RECOMMENDATION

1. After the Selection Committee evaluates the proposals, the Agency ~~project manager~~ Procurement Officer must prepare a committee report ~~to the Agency Head~~. The Chair and each Committee member must sign the report.
2. The report must rank each offeror's proposal from the most advantageous to the least advantageous. For each offeror, the report should provide the final score and a summary analysis of each proposal including an assessment of the offeror's compliance with the requirements of the solicitation, any changes to the technical evaluation scores and a narrative to support the changes.
- ~~3.~~ The report must include the Committee's recommendation regarding the source(s) the Agency should select for ~~award or~~ negotiation.
- ~~4.~~ or award. The Committee must support a recommendation to ~~award to or~~ negotiate or award with a higher priced, ~~higher scored~~ offeror with a written finding that the technical superiority of the higher priced offer relative to other offers, warrants the additional cost.
- ~~5.3.~~ The Committee must document the rationale for the finding of technical superiority in detail. Unsupported conclusory statements are not acceptable.

6.4. The report must include a cover page to the report identifying the procurement and including the names and signatures of the Committee members.

11.1.17 AWARD IF PRICE ~~IS~~ AN INITIAL EVALUATION FACTOR - SC Code Ann § 11-35-1530(9)

~~A. If~~When price is an initial evaluation factor ~~in the RFP, the Agency must~~, award ~~to~~ may be made to the highest ranking offeror whose offer the Selection Committee determines to be most advantageous to the Agency, taking into consideration price and the evaluation factors set forth in the RFP.

~~B. without conducting negotiations. However, the Agency may in lieu~~Section 11-35-1530(9) provides that "the procurement officer, in his sole discretion and not subject to review under Article 17, may proceed in any of the ~~forgoing, determine to utilize one of the options provided~~ manners" allowed in SC Code § 11-35-1530(8). ~~(Parts)~~ (Part 11.1.17 and/or Part 11.1.18 ~~and 11.1.19~~) below). As used in that sentence, the term "sole discretion" applies to the decision whether or not to negotiate at all, i.e., whether to make an award to the highest ranked offeror without negotiations or to conduct negotiations.

11.1.18 NEGOTIATIONS AFTER EVALUATION AND RANKING

~~See Appendix E.~~

11.1.19 BEST AND FINAL OFFERS (BAFO)

See 11.1.14 above and Appendix E.

A. Negotiation is an exchange between the Agency and an offeror undertaken with the intent of allowing the offeror to revise its proposal. Negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

B. Negotiated proposal revisions may affect the scope of the proposed contract, so long as the changes are within the general scope of the request for proposal.

C. Negotiations are optional.

D. Negotiations must be controlled by the Agency Procurement Officer

[Commentary: Manage vendor expectations by conveying the following rules to the vendor in writing: (i) the potential for submitting cost and pricing data, (ii) the potential for a BAFO process, (iii) the absence of any obligation to provide formal notice that negotiations have been terminated with an individual offeror, (iv) the restrictions imposed by the solicitation on communications by the offeror.]

E. (3) The primary objective of negotiations is to maximize the Agency's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. [11-35-310(28); 11-35-1530(9)]

F. Negotiations are tailored to each offeror's proposal.

G. Negotiations must be meaningful. The procurement officer is encouraged to discuss those aspects of an offeror's proposal that could, in the opinion of the procurement officer, be altered or explained to enhance materially the proposal's potential for award. However, the procurement officer is not required to discuss every area where the proposal could be improved. The scope and extent of negotiations are a matter of procurement officer judgment.

H. Negotiations must be conducted in good faith.

[Commentary:

(1) Negotiations present an opportunity for offerors to expand, strengthen, enlarge, enhance, or further develop their proposals, so long as the changes are (i) within the general scope of the request for proposals and (ii) do not involve a significant revision to the solicitation's mandatory requirements. The Procurement Officer can facilitate such improvements by identifying concerns with an offeror's proposal, including significant deficiencies, weaknesses, excesses, ambiguities, uncertainties, omissions, errors or mistakes. Concerns may involve any aspect of an offeror's proposal, including price, past performance, references, technical approach, and any matter evaluated. As an example, the procurement officer could identify excesses or "gold plating" that could be eliminated along with a price concession.

(2) Issues raised during the evaluation process may provide valuable information for negotiations.

(3) As noted in the limits on exchanges - item (e) below, a procurement officer should avoid engaging in unfair negotiation practices, such as providing one firm's innovative technical solution to another offeror or aggressively identifying concerns in negotiations with one offeror while failing to undertake any such effort in negotiations with another offeror.]

I. Negotiations should not involve a significant change to the solicitation. If the procurement officer makes changes to the solicitation's mandatory requirements or general scope, the procurement officer must request best and final offers pursuant to Part 11.1.8 below.

J. Once negotiations with a vendor begin, the procurement officer must attempt, in good faith, to successfully negotiate a "satisfactory contract" - without regard to any other proposals received. (Negotiations are not an opportunity to re-evaluate one offeror against another. That step took place during the evaluation and ranking.)

K. If the procurement officer concludes that a satisfactory contract cannot be negotiated, the procurement officer may then proceed as allowed by section 11-35-1530(8). In evaluating whether or not a contract is satisfactory, the stated evaluation factors must form the ultimate basis of your decision.

L. Under 11-35-1530(9), the contract file must contain the basis on which the award is made. Under 11-35-310(28), the award of the contract must be made on the basis of the evaluation factors stated in the solicitation. If award is made to the highest ranked offeror without negotiations, the basis for award should appear in the written determination explaining the evaluation and ranking. If award is made after negotiations, the basis for award must also explain (i) the results of any negotiations, and (ii) the reasons any negotiations were unsuccessful, i.e., why a satisfactory contract could not be negotiated with an offeror

M. If an offeror's initial price is considered unacceptable, make a determination of price unreasonableness under R. 19-445.2095(J)(1)(c) prior to ranking. Negotiations are not a mechanism to price shop. If a price reduction cannot be negotiated, the BAFO process may be appropriate.

11.1.19 BEST AND FINAL OFFERS (BAFO)

- A.** BAFOs are used to make changes to the general scope of the project, most commonly to achieve price reductions that could not be achieved through negotiations (typically because the price reduction requires a reduction in the scope of work required by the solicitation that cannot be achieved properly in negotiations).
- B.** Best and final offers may be requested only after evaluation and final ranking pursuant to Section 11-35-1530(7). Best and final offers may be sought before, after, or without negotiations. 11-35-1530(8)(c). If negotiations are started, those negotiations must be concluded before the procurement officer may seek best and final offers
- C.** In conducting a BAFO, the procurement officer should:
 - 1.** make changes to the solicitation's required scope of work, as long as the changes are within the general scope of the request for proposals, and
 - 2.** provide all responsive offerors an opportunity to submit their best and final offers
- D.** A request for best and final offers must be issued as an amendment to the request for proposals. The request shall include:
 - 1.** Any changes to the request for proposals allowed by Section 11-35-1530(8)(c);
 - 2.** Notice that negotiations are concluded, if applicable;
 - 3.** Notice that this is the opportunity to submit a best and final offer;
 - 4.** A common cutoff date and time that allows a reasonable opportunity for submission of written best and final offers; and
 - 5.** Notice that if any best and final offer is submitted, it must be received by the date and time specified and is subject to the rules governing submission of proposals.

[Commentary: (1) Amendments for purposes of a BAFO are not posted to the internet. Rather, they are sent only to actual offerors. (2) Best and final offers should be submitted as proposal revisions. Include appropriate instructions in your request for BAFOs.]
- E.** Following receipt of best and final offers, all responsive offerors must be evaluated and ranked from most advantageous to least advantageous to the Agency, considering only the evaluation factors stated in the request for proposals. Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State. [11-35-310(28); 11-35-1530(9)] After conducting a BAFO, the procurement officer may not conduct successive rounds of best and final offers.
- F.** Do not disclose confidential information derived from proposals submitted by or negotiations conducted with competing offerors. [11-35-1530(8)]
- G.** If, in the judgment of the Procurement Officer, based on market research or otherwise, a solicitation amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, such that additional sources likely would have submitted offers had the substance of the amendment been known to them, the procurement officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

11.1.20 AWARD

- A.** The Agency Head or its governing body typically makes the final selection decision- (after final negotiations, if any, are complete).
- B.** The Agency Head or its governing body may not overturn the Selection Committee's decision unless they determine in writing that there is no rational basis for the Committee's decision, the Committee did not follow the RFP evaluation factors, or the Committee exercised its discretion in an arbitrary or capricious manner.
- C.** If the Agency Head or its governing body decides to reject the Committee's selection decision, the Agency must cancel the procurement action and start a new procurement process.
- D.** If the Agency rejects the decision of the committee and chooses to cancel the procurement, the ~~agency~~Agency must comply with the requirements Part 6.2.16(B).- See SC Code Ann. § 11-35-1710 and Regs. 19-445.2097.
- E.** After the Agency Head approves the award, the ~~Project Manager~~Procurement Officer may submit the proposed contract, with supporting documentation, to OSE for review and approval.

11.1.21 NOTICE OF INTENT TO AWARD

- A. ~~Requirement of Posting~~REQUIREMENT OF POSTING – *SC Code Ann § 11-35-1530(9) & § 1520(10)*11-35-1530(9)
1. Once the Agency selection is final, it must post an SE-470, Notice of Intent to Award CM-R Contract, ~~of a contract to the selected offeror.~~
 2. The Agency must post the Notice at the time and in the location announced in the RFP.
 3. The Agency must also promptly mail a copy of the notice ~~to~~ each responsive offeror.
 4. If an Agency is unable to confirm intent to award on the posting date announced at the RFP, it must post a notice on that date at the specified location stating the new date the Agency will post the Notice ~~(SE-470).~~
- B. OSE ~~Concurrence with Posting~~CONCURRENCE WITH POSTING - *SC Code Ann §§ 11-35-510 and 11-35-830*
1. OSE must concur in the posting of Notice of Intent to Award a contract.
 2. If not already provided, the Agency must provide OSE with a copy of the proposed Notice of Intent to Award CM-R Contract, proposed contract as modified by negotiations, if any, and Selection Committee report with supporting documentation. The Agency must make this submittal using an SE-460, Request for Concurrence in Posting Notice of Intent to Award CM-R Contract.
 3. This submittal must be made after the Selection Committee's final selection and completion of negotiations. However, the Agency may submit its request to OSE pending final approval of the proposed contract by the Agencies governing board or Agency Head.
 4. OSE will have five working days from the date of receipt of the SE-460 and all required documentation to notify the Agency of any defect in their documentation or, based on that documentation, any apparent defect in their selection procedures. If the Agency does not receive an objection from OSE within five working days from the date OSE receives the SE-460 and all required documentation, OSE will be deemed to have granted approval for the Agency to post the Notice of Intent to Award.
 - ~~5.~~ To expedite this process, the Agency must email the OSE Project Manager, State Engineer and OSE administrative assistant PDF copies of the SE-460 and all required documentation. In lieu of email, the Agency may FAX the SE-460 and required documentation or send them by the US Postal Service. In case of a FAX or delivery by the Postal Service, the Agency only needs to copy the State Engineer and OSE administrative assistant with the Form SE-460.
- ~~6.5.~~ NOTE: The requirement for a copy to the State Engineer and administrative assistant is to expedite the process in the event the OSE project manager is out of the office.

11.1.22 CONTRACT EXECUTION WAITING PERIOD - *SC Code Ann §§ 11-35-3020(c)(ii) & 11-35-4210(1)(b)*

- A. The Agency must wait eleven days after posting the SE-470, Notice of Intent to Award CM-R Contract, before it may execute a contract with selected offeror.
- B. During this time, any offeror who disagrees with the Agency's decision may protest the contract award. If the State Engineer receives such a protest in writing during this period, the Agency may not execute a contract until the matter is resolved unless the Agency, in accordance with the Procurement Code, requests a lifting of the stay and CPOC grants the request. *See SC Code Ann § 11-35-4210(7).*
- C. If the State Engineer does not receive any protests, the Agency may execute a contract on the eleventh day after posting the SE-470.

C.

11.1.23 SUBMITTING THE CONTRACT TO CONTRACTOR FOR EXECUTION

Once all conditions precedent to executing a contract have occurred, the Agency should submit an unsigned copy of the contract to the contractor with a cover letter requiring the contractor to execute the contract and return the original contract along with the following documents to the Agency within fourteen days:

- A.** Certificates of insurance in the form of the latest edition of the ACORD 25S showing that the Contractor has Insurance meeting the requirements of the RFP in place for the project;
- B.** The SE-355, Performance Bond; and
- C.** The SE-357, Labor & Material Payment Bond.

11.1.24 REVIEWING CERTIFICATE OF INSURANCE AND PERFORMANCE AND PAYMENT BONDS

SC Code Ann §§ 11-35-830, 11-35-3030(3) & 29-6-250 and Regs 19-445.2145(C)(2)

- A. After receiving the certificates of insurance and performance and payment bonds from the contractor, the Agency should review them to determine that they are authentic and meet the requirements of the Procurement Code and Regulations.
- B. The Agency is responsible to assure that it has the required labor and material payment bond in place before permitting the contractor to start work. *See Sloan Const. Co., Inc., v. Southco Grassing, Inc., 377 S.C. 108,659 S.E.2d 158 (2008).* Failure to do so could make the Agency liable for the contractor's failure to pay its subcontractors and suppliers. OSE has published a Surety Bond Review Guide to assist the Agency in fulfilling this obligation.

11.1.25 **RETENTION OF SELECTION RECORDS** – *SC Code Ann § 11-35-2430 and Regs 19-445.2005(B)*

- A. The Agency should retain all documents and records the Agency generates or receives related to the procurement at the organization level of generation until the Agency makes the selection decision. Then, the Agency should collect all records relating to the source selection effort and forward them to the Agency procurement office for inclusion in the official contract file.
- B. At a minimum, the Agency must retain the following records in its procurement file:
 - 1. Request to procure by the RFP method, with OSE authorization;
 - 2. Agency Selection Plan;
 - 3. Plan approval documents with any directed changes;
 - 4. All orders or other documentation establishing membership on the Selection Committee and delegation of duties (e.g. Agency Head);
 - 5. Records of attendance and a summary of proceedings of pre-solicitation and pre-proposal conferences;
 - 6. RFP with amendments;
 - 7. Selection Committee Meeting Minutes
 - ~~7,8.~~ All proposals;
 - ~~8,9.~~ The Selection Committee's classification report;
 - ~~9,10.~~ The reason for rejecting any offer as not acceptable;
 - ~~10,11.~~ Records of discussions with and responses from offerors during the discussion process outlined in Part ~~11.1.14~~ 6.2.15;
 - ~~11,12.~~ Modifications to proposals resulting from discussions;
 - ~~12,13.~~ Best and final offers;
 - ~~13,14.~~ The Selection Committee report with rankings and recommendations;
 - ~~14,15.~~ Agency Heads memorandums and instructions to the Selection Committee and ~~project manager~~ Procurement Officer;
 - ~~15,16.~~ Agency Head or governing body's decision regarding recommendations for source selection; and
 - ~~16,17.~~ Any other data or documents related to the selection process.

18. All Selection Committee's non-disclosure and procurement integrity forms.

11.1.26 NOTIFICATION ~~OF~~ UNSUCCESSFUL OFFERORS

~~A. Prior to Notice of Award:~~

- ~~1. During the selection process, the Agency must provide prompt notification of its selection decision to all unsuccessful offerors.~~
- ~~2. When the Selection Committee determines that an offeror's proposal is not acceptable, the Agency must notify the offeror of the basis of the determination in general terms and advise the offeror that it will not consider a revision to the proposal.~~
- ~~3. Such notice must not be in the form of a blanket notice to all offerors but must be an individual notice tailored to each offeror.~~
- ~~4. Each individual notice must not apprise the offeror of the status of any other offeror's proposal.~~

~~B. After Notice of Award~~ AFTER NOTICE OF AWARD:

~~1.A.~~ When the Agency awards a contract for construction on a basis other than price alone, the Agency must furnish the basis for the selection decision and contract award to unsuccessful offerors upon their written request.

B. The Agency should provide unsuccessful offerors with a debriefing upon request.

2.