

CHAPTER 6

PROCUREMENT OF DESIGN-BID-BUILD CONSTRUCTION CONTRACTOR COMPETITIVE SEALED BIDDING

(Procurements Greater than \$50,000)

6.1 RELATED STATUTORY AUTHORITY

- 6.1.1 SC Code § 10-1-180 gives the State Engineer the authority and responsibility to determine the enforcement and interpretation of the building codes and reference standards on state buildings.
- 6.1.2 SC Code § 11-35-1810 requires that the responsibility of the bidder shall be determined for each contract let by the State.
- 6.1.3 SC Code § 11-35-3023(B) permits prequalification of construction bidders in a design-bid-build procurement for unique construction, or for projects over ten million dollars in value, in accordance with OSE criteria and procedure.
- 6.1.4 SC Code § 11-35-3020 requires that the agency send all responsive bidders a copy of the bid tabulation within 10 working days following the bid opening.
- 6.1.5 SC Code § 11-35-3020 permits negotiations after unsuccessful competitive sealed bidding within the limitations described by the law.
- 6.1.6 SC Code § 11-35-3030 requires that all competitive sealed bidding for state construction contracts in excess of \$50,000 be provided with bid security.
- 6.1.7 SC Code § 11-35-3030 and 29-6-250 requires that all construction contracts valued in excess of \$50,000 be provided with both a performance and a labor and material payment bond in the full amount of the contract.
- 6.1.8 SC Code § 11-35-4210 permits the State Engineer to resolve protested construction solicitations and awards.
- 6.1.9 SC Code § 40-11-260 requires general and mechanical contractors to be licensed for projects valued at \$5,000 or more.
- 6.1.10 SC Code § 40-79-29 requires a valid license to engage in a burglar or fire alarm business or activity. Note that SC Code § 40-79-310 and § 40-11-410(5)(d) permits mechanical contractors with an electrical contractor's license to design, install, and service fire alarm systems.
- 6.1.11 SC Regulation 19-445.2050 permits only the information disclosed at the bid opening to be considered as public information under the Freedom of Information Act until the Notice of Intent to Award is issued.

6.2 APPLICABILITY

- 6.2.1 SC Code Ann § 11-35-3005 provides a list of project delivery methods agencies are allowed to use on construction projects. One of these delivery methods is design-bid-build.
- 6.2.2 Pursuant to SC Code Ann 11-35-3010, an agency must make a written determination of the project delivery method that will result in the most timely, economical, and successful completion of the construction project and submit that determination to OSE for approval.
- 6.2.3 SC Code Ann Reg. 19-445.2145(B)(3) designates design-bid-build as an appropriate project delivery method for any infrastructure facility (except guaranteed energy, water, or wastewater savings contracts). The Agency will find a more detailed discussion of the determination of project delivery method as well as a model determination for design-bid-build in Chapter 2 of this Manual
- 6.2.4 SC Code Ann § 11-35-3015(2) provides that if the agency determines that design-bid-build is the most appropriate delivery method for the project, construction services must be procured through the competitive sealed bidding process as provided in SC Code Ann §§ 11-35-1520 and 3020.

6.3 ADVERTISING PROJECTS FOR BIDDING

SC Code Ann § 11-35-1520(3) & § 11-35-1550(3) and Reg. 19-445.2042

- 6.3.1 The competitive sealed bidding phase of a construction project begins with the advertisement of the project in South Carolina Business Opportunities (SCBO). It ends with the signing of the construction contract by both parties and the issuance of the Notice to Proceed.
- 6.3.2 The Agency must advertise all construction contracts with a construction budget exceeding \$50,000 in SCBO. The SCBO advertisement is the official invitation for construction bids. The Agency may advertise in other media but errors in advertisements other than SCBO do not constitute a basis for a protest.

- 6.3.3 An Agency may submit advertisements for construction contracts within their construction procurement certification directly to SCBO using the SE-310, Invitation for Construction Services in Word format.
- 6.3.4 The Agency must submit advertisements for construction contracts that exceed the agency's construction certification to OSE, using the SE-310, Invitation for Construction Services in Word format, for approval.
- 6.3.5 After a satisfactory review of the bid documents, OSE will approve the Invitation and submit it to SCBO for publication.

6.4 PRE-BID CONFERENCES AND SITE VISITS – SC Code Ann Reg. 19-445.2042

- 6.4.1 Agencies must advertise pre-bid conferences and site visits in SCBO.
- 6.4.2 The Agency should schedule the conference to occur no less than 14 days prior to bid opening. This will allow the Agency to clarify by addendum any issues bidders raise at the pre-bid conference
- 6.4.3 An Agency desiring to make potential bidders' attendance at a pre-bid conference mandatory in order to bid the project must make a written determination that mandatory attendance is justified by the unique nature of the project and that a mandatory conference will not unduly restrict competition. The Agency must place this determination in its procurement file and provide a copy for information only to OSE with the SE-310.
- 6.4.4 Non-Mandatory Pre-Bid Conferences and Site Visits do not require attendance by prime bidders in order for them to bid a project.
- 6.4.5 **Who Should Attend**
 - A. The Agency, the Agency's A/E, and the OSE project manager should attend all pre-bid conferences for projects exceeding the Agency's construction contract certification.
 - B. On all other projects, the Agency may request an OSE representative to attend.
- 6.4.6 **Conducting the Conference**
 - A. The Agency or its A/E should conduct the pre-bid conference. Table 6.4-1 at the end of this chapter contains a list of suggested pre-bid discussion items. The Agency and its A/E should customize the actual list of discussion items for the particular project.
 - B. The Agency or its A/E should discuss the Bid Documents (project manual and drawings) at the pre-bid conference in sufficient detail to ensure that all prospective bidders understand the scope of the project.
- 6.4.7 **Attendance at a Mandatory Pre-Bid Conference**
 - A. If no prospective bidder, or only one prospective bidder, attends a mandatory pre-bid conference, the Agency may cancel the invitation for bid or schedule a new pre-bid conference that is either mandatory or non-mandatory.
 - B. If the Agency chooses to schedule a new pre-bid conference, it must advertise the conference in SCBO. The Agency should schedule this new conference to occur no less than 14 days prior to bid opening.
 - C. This may require the Agency to advertise a new bid opening date and time in SCBO at the same time it advertises the new pre-bid conference.

6.5 ADDENDA

- 6.5.1 The Agency must issue an addendum for modifications, corrections, or clarifications to the bid documents including, but not limited to, the following:
 - A. Providing a list of all firms represented at a mandatory pre-bid conference;
 - B. Providing responses to questions received from potential bidders during the bidding period;
 - C. Providing a list all substitutions approved by the Agency or design professional;
 - D. Providing clarification to items in the bid documents prior to the date for the receipt of bids;
 - E. A change in the date for the receipt of bids;
 - F. Rescheduling a bid opening; or
 - G. Canceling the invitation for bids.
- NOTE:** Meeting minutes from a Pre-Bid Conference/Site Visit are NOT to be included in an addendum. Only information that changes the contract documents should be included.
- 6.5.2 The Agency must issue all addenda modifying, correcting, or clarifying the bid documents at least 120 hours, exclusive of state holidays, prior to bid opening. If there are intervening holidays, the 120 hour period must be increased by 24 hours for each such holiday.

- 6.5.3** If the Agency becomes aware of a critical correction or clarification to the bid documents less than 120 hours prior to bid opening, the Agency should postpone the bid opening to allow issuance of the clarification a minimum of 120 hours prior to the revised bid opening time and date.

Example: Agency's architect issues an addendum at 3 PM on a Thursday. 120 hours later is at 3 PM on the following Tuesday. However, the intervening Monday is a state holiday requiring the Agency to add 24 hours to the 120 hour time period for a total of 144 hours. Therefore, the earliest cut-off for receipt of bids is 3 PM on the following Wednesday.

- 6.5.4** A potential bidder may protest an addendum within 15 days of its issuance. *See SC Code Ann § 11-35-4210(1)(a)*. This is one reason why, the Agency must not issue an addendum less than 120 hours prior to the date for receipt of bids. Otherwise, the time period to protest the addendum could extend beyond the time period to protest an award (10 day period). Moreover, this 120 hour period gives potential bidders the opportunity to digest and accurately price the addendum.
- 6.5.5** The Agency may issue an addendum postponing the date for receipt of bids or withdrawing the invitation for bids at any time prior to the time set for bid opening.
- 6.5.6** When the Agency does issue an addendum to reschedule a bid opening, OSE recommends that the Agency schedule the new bid opening date no less than 5 calendar days from the issue date of the addendum. (See 6.6.4 below.)
- 6.5.7** The bid documents notify potential bidders requesting plans to provide contact information, including an email address, to the party providing the plans. The Agency or its representative must retain this contact information in order to notify plan holders of addenda.
- 6.5.8** If an agency conducts a mandatory pre-bid conference, the Agency must send addenda to all to those entities attending the pre-bid conference. If the Agency does not conduct a mandatory pre-bid conference, the Agency should send addenda to all plan holders of record.
- 6.5.9** The bid form has a location for bidders to acknowledge receipt of addenda.

6.6 BID POSTPONEMENT

- 6.6.1** The Agency may postpone a bid opening for any of the following reasons:
- A.** Causes beyond the control of the bidders (e.g. flood, fire, accident, weather conditions);
 - B.** Emergency or unanticipated events that interrupt normal government operations;
 - C.** Revision of specifications and/or drawings; or
 - D.** When postponement is clearly in the best interest of the State.
- 6.6.2** The Agency may postpone bids by issuing an addendum any time prior to the time set for the bid opening. If there is not enough time to issue a written addendum prior to the time set for the bid opening, the Agency must notify bidders by telephone or other appropriate means followed with a written copy of the addendum. If possible, the Agency should verify with bidders their receipt of the notice of postponement.
- 6.6.3** When time permits, the Agency must advertise notification of the postponement of bids in SCBO.
- 6.6.4** The addendum should notify the bidders of the postponement of the original bid date and establish a new bid date. The new bid date should be at least five days after the original bid date.

6.7 BID CANCELLATION

- 6.7.1** The Agency may cancel the invitation for bids by written addendum at any time prior to the time set for the bid opening.
- 6.7.2** The Agency may issue the addendum as late as the time set for opening of bids. The Agency should send the addendum to all plan holders of record as soon as the agency determines that it will cancel the bid opening.
- 6.7.3** When time permits, the Agency must advertise the notification of the cancellation of bids in SCBO.

6.8 BID OPENINGS

- 6.8.1 Receipt of Bids Prior to Bid Opening – SC Code Ann § 11-35-1520(4)**
- A.** The Agency must keep all Bids (including modifications) it receives before the time of opening secure and unopened. However, the Agency's Procurement Officer or his/her designee may open unidentified bids solely for the purpose of identification.

- B. If a person opens a sealed bid by mistake, they should immediately write their signature and position on the envelope and deliver it to the Agency's procurement officer. This official must reseal the envelope and write on it an explanation of the opening, the date and time opened, the invitation for bids' number and his/her signature.

6.8.2 Public Opening of Bids – SC Code Ann § 11-35-1520(5) and Reg. 19-445.2050

A. TIME FOR CONDUCTING BID OPENING

1. The agency must publicly open bids at the time set forth in the SE-310, Invitation for Construction Services as the deadline for the receipt of bids.
2. In the event of a force majeure preventing the Agency from receiving bids, the Agency may postpone the bid opening until the next business day at the time originally specified.

B. BIDS RECEIVED AFTER DEADLINE FOR RECEIPT

1. The Agency must receive bids at the address indicated in the SE-310, Invitation for Construction Services, and published in SCBO before the time for bid opening. If the indicated address is served by a central mailroom, delivery of bids sent by mail or other special delivery service (UPS, FED-EX, etc.) to that mailroom is sufficient.
2. The Agency must reject bids not delivered at the indicated location or the Agency mailroom before the time of the bid opening.
3. The Agency should return any bid it rejects for being late to the bidder unopened.
4. If, after the bid opening, the Agency discovers a bid delivered at the location for delivery or the mailroom before the time for bid opening, the Agency must open and consider the bid. In such event, the Agency must document the circumstances in writing and place it in its procurement file.

C. CONDUCTING THE BID OPENING

1. At the time set for the bid opening, as indicated on the SE-310, Invitation for Construction Services, or as modified by addendum, the procurement officer should declare that the time for receipt of bids has arrived and that he/she will no longer accept bids. The Agency must reject all bids received after this time and return them to the bidders unopened.
2. After declaring the arrival of the time for receipt of bids, the procurement officer should publicly give his/her name and the names of the witnesses and record this information on the bid tabulation sheet.
3. The procurement officer should then open timely bids individually and read them in the presence of one or more witnesses. When only one bidder submits a timely bid, the procurement officer should open the bid and read it aloud.
4. The procurement officer should read aloud and record on a bid tabulation sheet the following information from each bid:
 - a. The Name of the bidder;
 - b. Compliance with bid security requirements;
 - c. Acknowledgment of all addenda;
 - d. Base Bid amount;
 - e. Alternate bid amounts, if requested;
 - f. Names of all subcontractors listed for the Base Bid, if requested; and
 - g. Names of all subcontractors listed for the Bid Alternates, if requested.
5. If an opened bid is non-responsive, the Agency must note this condition on the bid tabulation sheet.
6. If the Agency receives multiple bids within the same envelope, it should accept only the lowest responsive bid.
7. See Part 6.9 for additional information concerning bid responsiveness.

6.8.3 Conclusion of Bid Opening

After reading bids, the Agency should thank the bidders for submitting bids and make the following announcements:

- A. The date and location of the posting of the SE-370, Notice of Intent to Award, as set forth in the Invitation for Construction Services;
- B. After posting, the Agency will mail a copy of the SE-370, Notice of Intent to Award to all bidders; and
- C. The Agency will mail a copy of the bid tabulation to all bidders within 10 working days of the bid opening.

6.8.4 After Bid Opening

- A. After the bid opening, but before posting of the SE-370, Notice of Intent to Award, the Agency needs to verify the following:
 1. That the bid security of each bidder complies with the requirements of paragraph 4.2 of the Instruction to Bidders. See also paragraph 6.9(C) of this Manual. See *SC Code Ann § 11-35-3030(1)(c) & Reg. 19-445.2145(C)*;
NOTE: To check the authenticity of an electronic bid bond, go to the Surety2000 web site (www.surety2000.com) to register (as Owner/Obligee) and follow the links to match the electronic bid bond number provided on the bid bond. Check the listed surety company against the OSE web site to determine compliance with paragraph 4.2 of the Instruction to Bidders.
 2. That the apparent low bidder and all listed subcontractors have the proper South Carolina Contractor's licenses to execute a contract for the project. See *S.C. Code Ann. § 11-40-200(B) and Reg. 19-445.2125(A)(4)*;
 3. That the lowest responsive bidder meets the State standards of responsibility as enumerated in Article 6 of the Instruction to Bidders. Refer to Part 6.16 of this Manual. See *S.C. Code Ann. § 11-35-3020(c)(i) and 19-445.2125*; and
 4. That the lowest responsive bidder has met the other requirements specific to the project.

6.9 DETERMINATION OF BIDDERS' RESPONSIVENESS

SC Code Ann § 11-35-3020(c)(i), § 1410(7), and Reg. 19-445.2070

6.9.1 Bid Irregularities that are Cause for Rejection

Reasons for which the Agency must reject bids as non-responsive include, but are not limited to, the following:

- A. Bidder's failure to attend a mandatory pre-bid conference and/or a mandatory site visit;
- B. Bidder's failure to deliver the bid on time;
- C. Except as expressly allowed by law, bidder's failure to provide the required bid security;
- D. Bidder's failure to include a properly executed power of attorney with its bid bond;
- E. Except as expressly allowed by law, bidder's failure to bid an alternate;
- F. Bidder's failure to list subcontractors as required by law;
- G. Bidder's qualification of his/her bid by materially modifying the bid form or listing material exceptions to the requirements of the solicitation;
- H. Bidder's delivery of his/her bid directly to the Agency or its representative via facsimile machine; or
- I. Bidder's failure to include in the bid envelope all material items required by the bid documents.

6.9.2 Minor Informalities are Not Cause for Rejection – *SC Code Ann § 11-35-1520(13)*

- A. The Agency should not reject bids for minor informalities (irregularities) in the bid.
- B. In such cases, the Agency may ask the bidder to correct the defect or where it is advantageous to the State, the Agency may waive the requirement.
- C. The Agency's request to correct or the determination to waive must be in writing.
- D. If the Agency asks the bidder for a correction of a minor informality and bidder fails to do so, the Agency may reject the bid as non-responsive.
- E. Minor informalities in the bid include, but are not limited to, the following:
 1. Bidder's failure to write "Sealed Bid Enclosed" on the outside of the mailing envelope;
 2. Bidder's failure to seal the bid envelope;
 3. Bidder's listing of a modification to the bid amount on the outside of the bid envelope provided such modification does not reveal the bidder's bid price before the bid opening (however, such modifications will only be considered to the extent permitted by law);
 4. Bidder's failure to list information on the envelope other than that which may be required by law;
 5. Bidder providing a fax copy or other reproduction of any or all bidding documents in the bid envelope;
 6. Bidder's failure to indicate for an alternate "ADD" or "DEDUCT", but only when the adjustment to the Base Bid is obvious;
 7. Bidder providing additional listings of "Subcontractor Specialty" beyond those listed on the bid form;

8. Bidder's failure to sign the bid, but only if:
 - a. the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of that authorization, and the bid carries that signature; or
 - b. the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;
9. Bidder providing a reproduction of a signature on any or all bidding documents;
10. Corporate Bidder's failure to include its seal on the bid;
11. Bidder's failure to sign the bid bond but only if the bond has been properly executed and signed by the bonding company or agent; and
12. Immaterial variations from the exact requirements of the bidding documents.

6.9.3 Failure to Provide Required Bid Security

SC Code Ann § 11-35-3030(1) and Reg. 19-445.2145(C)

- A. A bid that does not include the bid security required by the Invitation for Construction Services is non-responsive and, unless it is eligible for correction as set forth below, the Agency must reject it.
- B. This means that each bid in excess of \$50,000 must include in the bid envelope either a certified cashier's check or a bid bond payable to the Agency (the Agency must be named as the obligee) in an amount of five percent of the Base Bid or greater. Personal checks or letters of credit are not acceptable.
- C. Copied or faxed bid bonds and Powers of Attorney are acceptable, but must be included in the bid envelope.
- D. Bid security in the form of a cashier's check must name the Agency as the payee. Bid security in the form of a bid bond must name the Agency as the obligee.
- E. If a bidder submits a bid bond, the surety must write the bond on AIA Document A310 or an equivalent form. The bid bond must be in the form of a paper copy or electronic bid bond. See Paragraph 6.8.4.A.1 for instructions on looking up an electronic bid bond to confirm its form. Each paper bid bond must be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the surety.
 1. The surety on a bid bond must be licensed to conduct business in the State of South Carolina. Unless otherwise noted in the bid documents, the surety must have an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability". In addition, the surety must show a financial strength rating of at least five times the contract price.
 2. The Agency may find Best ratings at the web address: <http://www3.ambest.com/ratings/default.asp>. On this page, the Agency will find place to enter a company's name to find it's Best's ratings (at the time of this writing on the right hand side of the page under Member Center). The Agency must register with the site to conduct a search. There is no cost to register.
- F. The Agency must give a bidder submitting a bid security that is not in the required amount one working day from the bid opening to cure the deficiency.
- G. The Agency must give a bidder submitting a bid bond written by a surety not meeting the required surety rating and financial strength one working day from the bid opening to cure the deficiency.
- H. A working day closes at the time of day the Agency's facility that receives the bids normally closes.

6.9.4 Failure to Acknowledge Addenda - SC Code § 11-35-1520(13)(d)

The Agency must reject a bid where the bidder failed to acknowledge all addenda unless:

- A. The bid received indicates in some way that the bidder received the addendum(a), such as where the addendum(a) added another item to the solicitation and the bidder submitted a bid on it, if the bidder states under oath that it received the addendum(a) before bidding and that the bidder will stand by its bid price; or
- B. The addendum(a) has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an addendum(a) correcting a typographical mistake in the name of the governmental body.

6.10 REQUIRED BID TABULATION – SC Code Ann § 11-35-1520(5) and Reg. 2050(A)

6.10.1 The Agency must prepare a final Bid Tabulation consisting of the following information:

- A. Project name and number;
- B. Agency name;

- C. Names of the persons opening bids and the witnesses, each of whom must initial the Bid Tabulation sheets;
 - D. List of all contractors submitting bids;
 - E. Acknowledgment of addenda;
 - F. Inclusion of proper bid security;
 - G. Base Bid amount(s);
 - H. Bid Alternate amounts, if requested; and
 - I. Listing of subcontractors for Base Bid(s) and Alternates, if requested; and
 - J. If the Agency declared any bid to be non-responsive, the reasons for that declaration.
- 6.10.2** The Agency must provide OSE a copy of the Bid Tabulation along with the SE-360, Request for Concurrence in Posting Notice of Intent to Award. [See Section 6.19(B)]
- 6.10.3** The Agency must provide all responsive bidders a copy of the Bid Tabulation at the same time they provide them a copy of the SE-370, Notice of Intent to Award. *See SC Code Ann § 11-35-3020(c)(i).*
- 6.11 EXTENDING BID ACCEPTANCE PERIOD – SC Code Ann Reg. 19-445.2065(C)**
- 6.11.1** If the Agency desires to extend the bid acceptance period beyond the time given in the Bid Form, then it should obtain a written extension of bid prices(s) from all bidders before the expiration of that period.
- 6.11.2** A bidder does not have to agree to hold its bid price beyond the bid acceptance period; however, the Agency should consider for award only the bids of those bidders who provide a written extension of their bids before the expiration of the original bid acceptance period.
- 6.11.3** If the Agency fails to obtain a written extension of at least one bid before the expiration of the acceptance period, it will have to re-bid the project before it can award a contract.
- 6.12 BID WITHDRAWAL, MODIFICATION, OR CORRECTION**
SC Code Ann § 11-35-3030(1)(d) & 11-35-1520(7)
- 6.12.1 Withdrawal or Modification of Bids Before Time for Opening Bids**
- A. At any time before the time of the bid opening, a bidder may modify or withdraw his/her bid.
 - B. A bidder's modification to his/her bid must be made on the bid form prior to the time of bid opening.
 - C. The Agency may not consider a modification to a bid on the outside of the bid envelope.
- 6.12.2 Withdrawal or Correction of Bids After Time for Opening Bids – SC Code Ann Reg. 19-445.2085**
- A. Except in limited circumstances, Bidders may not withdraw or modify their bids in the period after the time of the bid opening but before the time for bid acceptance.
 - B. The Agency should require a bidder requesting permission to withdraw or correct his/her bid during this period to submit the request in writing. All decisions to permit correction or withdrawal of bids must be supported by a written determination of appropriateness made by the State Engineer or, if the project is within Agency certification, the Agency Head.
 - C. CORRECTION:
 - 1. Correction to bids after bid opening may cause bidders and the public to question the integrity of State procurements and may be prejudicial to fair competition. Nonetheless, the Consolidated Procurement Code does permit approval of requests to correct a mistake in bid after bid opening in limited circumstance.
 - 2. The following applies to a request to correct a bid after bid opening due to a mistake made:
 - a. Correction is allowable in the unlikely event that the low responsive and responsible bidder requests a downward correction in bid price due to a mistake in bid. The rules that follow do not apply to such a request.
 - b. With the exception of a. above, a mistake in judgment is never correctable.
 - c. A mistake of fact (error in transcription, clerical error, etc.) is correctable under the following limited circumstances:
 - 1) The mistake must be one that will clearly cause the bidder substantial loss (SC Code Ann Reg. 19-445.2085(A)); and

- 2) The correction must not be prejudicial to the interest of the State or fair competition.
 - a) If the bidder requesting correction is not the low bidder and the correction will make the bidder the low bidder, the mistake and intended bid must be clearly evident from examining the bid document. SC Code Ann Reg. 19-445.2085.
 - b) A bid that is nonresponsive on its face is never the low bid; therefore, the mistake and intended bid must be clearly and unambiguously evident from examining the bid document in order to allow a correction that will make the bid responsive. SC Code Ann Reg. 19-445.2085.
 - c) If the bidder is the low bidder and is requesting an upward correction to his bid that is allowed will not change his position as low bidder, then:
 - (1) The mistake and intended bid must be:
 - (a) clearly evident from examining the bid document; or
 - (b) apparent from an examination of clear and convincing evidence presented by the bidder.
 - (2) The corrected bid must be significantly lower than the next lowest bid so as not to create the perception in the minds of reasonable people that the bidder is attempting to game the system by seeking to recover the difference between his bid and the next lowest bid.
 - (3) The request must not be one to correct multiple mistakes.¹
 - (4) The requestor must not have a history of requesting bid corrections.²
3. Any request to correct a bid due to mistake must be made before performance.
4. A low bidder requesting an upward correction to his bid based on evidence other than the bid document must:
 - a. Provide the following documentation in support of his claim of mistake:
 - 1) A complete copy of his bid takeoff marked confidential.
 - a) All portions of the bid takeoff prepared by hand or typewriter must be provided in the original format.
 - b) All copies of those portions of the bid takeoff prepared on a computer must be accompanied by:
 - (1) an audit record, acceptable to the party reviewing the request for correction, showing the time, date, and nature of every change, up to the time of bid opening, made to those portions of the bid takeoff on which the bidder is relying to prove his claim of mistake and to prove his intended bid;
 - (2) a description of the bid preparation program used by the bidder, including the name and edition of the software and information to provide the reviewer with an understanding of how the bidder prepares his bids using the program.
 - 2) If the mistake involves a mistake by the bidder related to a subcontractor's bid, the subcontractor's bid as received by the bidder along with evidence showing that the bid was received by the bidder before bids were due to the agency.
 - b. If required by the person reviewing the request, consent to an independent audit of any computer generated document including an audit of the software used, the hard drive of the computer and/or server on which the bid was prepared, which audit is to be provided at bidder's cost.
5. All statements by bidder and other individuals supporting the request for correction must be upon personal knowledge given under oath under penalty of perjury.

D. WITHDRAWAL

1. A bidder's request to withdraw a bid due to mistake must document the fact that the bidder's mistake is clearly an error that will cause him substantial loss.

¹ Multiple mistakes, each of which will cause substantial loss, may raise the public perception that the bidder has intentionally built mistakes into his bid to use to his advantage after bid opening. Even if this is not in fact what the bidder has done, multiple unrelated mistakes in a bid, each of which will cause substantial loss, is an indication of extreme carelessness on the part of the bidder causing one to question the responsibility of the bidder. Provided the bidder meets the requirements for withdrawal of bid, permitting the bidder to withdraw his bid due to mistake is the better approach in such cases.

² A history of requesting corrections indicates the bidder, either negligently or intentionally, has a reckless disregard for the integrity of the State Procurement system and fair competition.

2. Though there is no South Carolina case on point, the common law standard is that the mistake must be a clerical mistake as opposed to a judgment mistake, and actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the bid and original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.
3. Historically, such documents were prepared by hand making their authenticity more reliable. Today, it is normal for bids to be prepared on a computer and the evidence of authenticity without digital forensics is not reliable. Therefore, the bidder must certify by affidavit under penalty of perjury that the documents provided in support of its claim of mistake are either original work papers, documents, and materials or true and accurate copies of original computer data on which its bid was actually based.
4. If the Agency allows a bidder to withdraw his bid because of the bidder's mistake, the decision to do so must be supported by a written determination of appropriateness by the CPO or his designee or, if the project is within Agency certification, the head of the Agency or his designee.
5. If the Agency allows a bidder to withdraw his bid because of the bidder's mistake, the Agency must return the bid security to the bidder. In the case of an electronic bid bond, the Agency does not need to take any action to return the security.

E. RETENTION OF BID SECURITY

1. If a bidder withdraws his/her bid without the Agency's approval or refuses to enter into a contract, then the Agency must retain his/her bid security.
2. If the security is a bid bond, the Agency should make a claim on the bond in accordance with the bonds provisions.

6.13 REJECTION OF ALL BIDS – SC Code Ann § 11-35-3020(c)(i) and Reg. 19-445.2065

6.13.1 Unless there is a compelling reason to reject one or more bids, the Agency must award to the lowest responsible and responsive bidder.

6.13.2 The Agency may cancel the invitations for bids after opening, but prior to award, if the procurement officer determines in writing that:

- A. Inadequate or ambiguous specifications were cited in the invitation;
- B. Specifications have been revised;
- C. The supplies or services being procured are no longer required;
- D. The invitation 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. Bids received indicate that a less expensive article differing from that on which the bids were invited can satisfy the needs of the State;
- F. All otherwise acceptable bids received are at unreasonable prices;
- G. The bids 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.

6.13.3 The Agency must state the reasons for canceling an invitation for bids in its determination.

6.13.4 The Agency must post a copy of the determination on the date and at the location given at the bid opening for the posting of the SE-370, Notice of Intent to Award.

6.13.5 The Agency must also mail a copy to all bidders, along with their bid security, and to OSE.

6.14 RE-BIDDING PROJECTS

6.14.1 If the Agency rejects all bids, it may re-bid the project provided it significantly modifies the scope of the construction documents or delays re-bidding by at least three months. The Agency must advertise the project for re-bid just as it did for bid.

6.14.2 When re-bidding a project, the Agency must add the word "RE-BID" above the title 'Invitation for Construction Services' on the SE 310, Invitation for Construction Services. The Agency must include any change in the scope of work in the project description in the Invitation.

6.14.3 For contracts exceeding Agency construction certification, the Agency must submit the new Invitation to OSE for approval and advertisement in SCBO.

6.15 TIE BIDS – SC Code Ann § 11-1520(9)

If two or more bidders are tied in price, while otherwise meeting all of the required conditions, the Agency must award the project as follows:

- 6.15.1** When the tie is between a South Carolina firm and an out-of-state firm, award the project to the South Carolina firm;
- 6.15.2** When the tie is between South Carolina firms, award the project to the South Carolina firm located in the same taxing jurisdiction as the project's location; and
- 6.15.3** When the tie is between South Carolina firms in the same taxing jurisdiction as the project's location, award the project by the flip of a coin in the offices of the State Engineer or the head of the purchasing Agency or either officer's designee, witnessed by all interested parties.

6.16 DETERMINATION OF BIDDER'S RESPONSIBILITY - S.C. Code Ann. § 11-35-1810 and Reg. 19-445.2125

Before it posts the SE-370, Notice of Intent to Award, the Agency must satisfy itself that the prospective contractor meets the State's Standards of Responsibility.

6.16.1 Criteria for Determining Responsibility

Criteria the Agency should use in determining whether the contractor meets the State's Standards of Responsibility include whether the contractor has:

- A.** The appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to meet all contractual requirements;
- B.** A satisfactory record of performance;
- C.** A satisfactory record of integrity;
- D.** The necessary legal qualifications to contract with the State (includes being properly licensed); and
- E.** Supplied all necessary information in connection with the inquiry concerning responsibility.

6.16.2 Verify Proper Contractor Licensing and License Limitations:

- A.** Prior to posting the SE-370, Notice of Intent to Award, the Agency must verify that the prospective contractor and his/her listed subcontractors have the proper contractor's license and license limitations and they were in effect at the time of bidding.
- B.** If the Agency determines that a prospective contractor or one of his/her listed subcontractors does not have the proper license and license limitations, the Agency must declare the prospective contractor is non-responsible. The Agency should also notify the S.C. Contractors' Licensing Board of the contractor or subcontractor offering to perform work without a proper license. The Agency may contact Contractors' Licensing Board at:

Department of Labor, Licensing and Regulation (LLR)
Division of Professional and Occupational Licensing - Contractors' Licensing Board
110 Centerview Drive Kingstree Building
Columbia, South Carolina 29210
Telephone: (803) 896-4686 FAX: (803) 896-4364

6.16.3 Uncertainty Concerning a Prospective Contractor's Responsibility

- A.** If an Agency is uncertain about a prospective contractor's responsibility, it should require the prospective contractor to complete a Contractor's Responsibility Questionnaire and provide any other information the Agency may need to support its determination.
- B.** The Agency should complete the project/Agency information on the Questionnaire and send it to the contractor by certified mail with return receipt requested. The questionnaire may be in the form of the AIA Document A305 – 1986 Contractors Qualification Statement; Consensus DOCS 221; SE-350, Questionnaire for Contractors; the questionnaire in the Prequalification Handbook, or any other document of the Agency's choosing.
- C.** Upon receipt of the Questionnaire and other requested information from the prospective contractor, the Agency should verify the information contained therein together with any other information available to the Agency, to determine if the prospective contractor is deficient in one or more way.

- D.** If a prospective contractor is determined to be responsible, then the Agency may proceed with submitting to OSE the SE-360, Request for Concurrence in Posting Notice of Intent to Award.
- E.** Right of Nondisclosure: Except as otherwise provided by SC law, the Agency must not disclose bidder furnished confidential information outside of the offices of the SFAA, the Office of the Attorney General, the OSE, or the Agency without prior written consent by the bidder.

6.16.4 Action upon Determination of Non-Responsibility

A. WRITTEN DETERMINATION

1. If the Agency determines a prospective contractor, to whom it would have otherwise awarded a contract, to be non-responsible, it should prepare a written determination to that effect. The written determination must:
 - a. Be prepared by the Agency's procurement officer;
 - b. Set forth the basis of the finding of non-responsibility; and
 - c. Be made part of the agency's procurement file.
2. The Agency should promptly send a copy of its determination to the non-responsible bidder and to OSE.

B. AWARD TO NEXT LOWEST BIDDER

The Agency may award the contract to the next lowest responsive and responsible bidder, if the bid is within the Agency's construction budget.

6.17 PERMITTED NEGOTIATIONS AFTER UNSUCCESSFUL BIDDING – SC Code Ann § 11-35-3020(d)(i)

6.17.1 If bids exceed available funds, the Agency may negotiate with the lowest responsive and responsible bidder when it determines in writing that:

- A. Circumstances will not permit the delay required to re-solicit competitive sealed bids; and
- B. The low bidder's Base Bid, less any deductive alternates, does not exceed available funds by more than ten percent of the construction budget established for that portion of the work.

6.17.2 In negotiations, the Agency may change the scope of the work to reduce the cost to be within the established construction budget. However, the Agency may not reduce the cost below the established construction budget by more than ten percent, without a written request by the Agency and the written approval of the State Engineer. The Agency's request must be in the best interest of the State.

6.17.3 The Agency may not accept or use substitution of listed sub-contractors as a means to negotiate a reduction in the contract amount.

6.17.4 Upon completion of successful negotiations with the contractor, the Agency must submit the following to OSE along with the SE-360, Request for Concurrence in Posting Notice of Intent to Award:

- A. The written determination declaring the reason(s) for negotiation; and
- B. A description of the changes made to the scope of the project.

6.18 INSUFFICIENT FUNDS AUTHORIZED BY FORM A-1 – SC Code Ann § 11-35-3020(d)(ii)

The Agency may not award a construction contract for a PIP project unless the most recently approved Form A-1 authorizes unencumbered funds sufficient to cover the full amount of the contract plus construction contingencies.

6.19 NOTICE OF INTENT TO AWARD – SC Code Ann § 11-35-3020(c)(i) and Regs 19-445.2090(B)

6.19.1 Requirement of Posting

- A. Once the Agency determines that the lowest responsive and responsible bid is within available funds, it must, unless there is a compelling reason to cancel the project, post the SE-370, Notice of Intent to Award, to the bidder submitting that bid by posting at the location stated in the Invitation for Bids and announced at the bid opening.
- B. Even if the Agency received only one bid, it must post this Notice.
- C. On the day of posting, the Agency must mail a copy of the notice with the bid tabulation to each responsive bidder.
- D. If a bidder has agreed to receipt of the SE-370, Notice of Intent to Award, and Bid Tabulation by email, the Agency may email the same to the bidder without placing a copy in regular mail.

6.19.2 OSE Concurrence with Posting – *SC Code Ann §§ 11-35-510 and 11-35-830*

- A. If the proposed contract value exceeds the Agency's construction contract certification, OSE must concur in the posting of the Notice of Intent to Award a contract.

- B. For such contracts, the Agency must provide the bid and responsibility determination documents supporting award of a contract to the proposed awardee. The Agency must make this submittal using the SE-360, Request for Concurrence in Posting Notice of Intent to Award.
- C. This submittal must be made after the Agency Project Manager has made a responsiveness and responsibility determination but concurrent with internal Agency approval requirements such as approval of the governing board or Agency Head.
- D. At a minimum, the Agency must submit copies of the following documents along with the SE-360, Request for Concurrence in Posting the Notice of Intent to Award, to OSE:
 - 1. The lowest responsive and responsible bidder's Bid Form;
 - 2. Contractor licenses, if applicable, for the low responsive and responsible bidder and his listed subcontractors (may be obtained from LLR's website at <https://verify.llronline.com/LicLookup/LookupMain.aspx>. Select the category "Contractors – Commercial" or, if applicable, "Burglar Alarm, Fire Alarm & Fire Sprinkler" and follow the instructions)
 - 3. If any other bidder submitted a lower bid but was determined to be non-responsive or non-responsible a copy of:
 - a. That bidder's Bid Form, and
 - b. A statement setting forth the basis for disqualifying such bidder;
 - 4. The low responsive and responsible bidder's bid Security with power of attorney;
 - 5. The final bid tabulation;
 - 6. A copy of the proposed SE-370, Notice of Intent to Award;
 - 7. A copy of the Contract to be executed by the parties;
 - 8. Except as noted below, a copy of the project A/E's latest cost estimate for the work; and
 - 9. At the Agency's option, the Agency may submit copies of the SE-955, Inspection/Material Testing Order Form, and the SE-580, Building/Construction Permit, with the SE-360. If the Agency chooses not to submit these documents with the Request, it must submit them to OSE after the protest period ends without protest or after final resolution of a protest and before issuance of the SE-370, Notice to Proceed.
- E. The Agency need not include a copy of the project A/E's latest cost estimate for the work if the estimate is identical to the estimate included in the OSE approved SE-310, Invitation for Construction Services, for the Project. By submitting the SE-360 without appending a copy of the latest estimate, the Agency certifies to OSE that the estimate is identical to the estimate included in the OSE approved SE-310, Invitation for Bids.
- F. OSE will have five working days from the date of receipt of the SE-360 and all required documentation to notify the Agency of any defect in their documentation or, based on that documentation, any apparent defect in their bid opening procedures or determination of responsiveness and responsibility.
- G. If the Agency does not receive a response from OSE within five working days from the date OSE receives the SE-360 and all required documentation, OSE will be deemed to have granted approval for the Agency to post the SE-370, Notice of Intent to Award.
- H. To expedite this process, the Agency must email the OSE Project Manager and the OSE administrative assistant PDF copies of the SE-360 and all required documentation. The email should include a request that the OSE Project Manager acknowledge receipt.
- I. In lieu of email, the Agency may FAX the SE-360 and required documentation, hand deliver them, 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 Request (not with the accompanying documentation). If the Agency delivers the Request and required documentation by Postal Service, the date of receipt will be established by the date stamped on the documents by the Materials Management Support Staff while opening mail. In such case the Agency must contact OSE and confirm the date of receipt by OSE before posting the Se-370, Notice of Intent to Award.

NOTE: The requirement for a copy to the OSE administrative assistant is to expedite the process in the event the OSE project manager is out of the office.

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

- 6.20.1** Unless the Agency only received one bid, it must wait eleven days after posting the SE-370, Notice of Intent to Award, before it may enter into a contract with the lowest responsive and responsible bidder.
- 6.20.2** During this time, any bidder who disagrees with the Agency’s decision as to who is the lowest responsive and responsible bidder may protest the contract award.
- 6.20.3** If the State Engineer receives such a protest in writing during this period, the Agency may not award a contract until the matter is resolved unless the Agency requests a lifting of the stay in accordance with the provisions of the Procurement Code and the CPOC grants the request. *See SC Code Ann § 11-35-4210(7).*
- 6.20.4** If the State Engineer does not receive any protests, the Agency may enter into the contract on the eleventh day after posting the SE-370, Notice of Intent to Award.

6.21 INSPECTION AND TESTING SERVICES AND BUILDING/CONSTRUCTION PERMIT

SC Code Ann §§ 11-35-510, 11-35-830 & 10-1-180

- 6.21.1** Chapter 1 in each of the International Code Council Series of Codes and Chapter 17 of the International Building Code require inspections by agencies or individuals approved by the Building Official. Moreover, testing of materials is typically a requirement of the specifications to ensure the materials provided by the contractor are in accordance with the design intent.
- 6.21.2** OSE has entered into statewide term contracts for inspection and material testing services with the ultimate goal of ensuring the construction of facilities is performed in accordance with building codes and contract documents. The requirements and procedures for using inspection and material testing services on a project are set forth in Appendix F. Statewide term contracts for inspection and material testing services, including services and fees, may be found at http://procurement.sc.gov/webfiles/MMO_spo/Contracts/bldginsp-s40.pdf. The listing of Inspection and Testing Firms, including point of contact, phone numbers, and addresses, may be found at <http://www.mmo.sc.gov/PS/agency/PS-ose-contracts.phtml>.
- 6.21.3** When required, the Agency must procure inspection/material testing services before the start of construction.
- 6.21.4 Submitting Inspection & Testing Orders to OSE with Request for Concurrence in Posting the Notice of Intent to Award**
- A.** The Agency may issue a purchase order for inspection and testing services contingent on the Agency executing a contract for construction and/or starting construction of the project.
 - B.** If neither event occurs, the Agency will have no obligation to the inspection firm other than to reimburse them for their cost in attending preconstruction meetings, if any. Therefore, the Agency may issue a purchase order for inspection and testing services prior to executing a contract for construction.
 - C.** In such event, the Agency may choose to submit the SE-955, Inspection/Material Testing Order, along with the proposed SE-580, Building/Construction Permit, to OSE along with its SE-360, Request for Concurrence in Posting the Notice of Intent to Award, thus avoiding the need to submit these documents to OSE for approval at a future date.
 - D.** If OSE approves the posting of the Notice of Intent to Award, OSE will issue the Agency a building permit after expiration of the protest period without protest (or after final resolution of a protest).
- 6.21.5 Submitting Inspection & Testing Orders to OSE after approval of the Request for Concurrence in Posting the Notice of Intent to Award**
- A.** In the event the Agency chooses not to follow the procedure of 6.21.4 above, the Agency must submit the SE-955, Inspection/Material Testing Order, along with the proposed SE-580, Building/Construction Permit, to OSE after expiration of the protest period without protest or after final resolution of a protest. OSE will have ten days from receipt of the SE-955, Inspection/Material Testing Order, and proposed SE-580, Building/Construction Permit, to sign the Building/Construction Permit and return it to the Agency or request additional information.
 - B.** The Agency may not issue the SE-390, Notice to Proceed, to the contractor until after OSE returns a signed SE-580, Building/Construction Permit, to the Agency.

6.22 SUBMITTING THE CONTRACT TO CONTRACTOR FOR EXECUTION

6.22.1 Once all conditions precedent to executing a contract have occurred, the Agency should submit a signed contract to the contractor with a cover letter requiring the contractor to execute the contract and return the original contract to the Agency within seven days and to provide the Agency with the following documents within three days thereafter:

- A. Certificates of insurance in the form of the latest edition of the ACORD 25S showing that the Contractor has insurance in place for the project that meets the requirements of Article 11 of the AIA Document A201-2007 General ~~Condition~~Conditions of the Contract for Construction, and modifications to that in the OSE Form 00811, Standard Supplementary Conditions- South Carolina Division of Procurement Services, Office of State Engineer Version;
- B. The SE-355, Performance Bond; and
- C. The SE-357, Labor & Material Payment Bond.

6.23 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)

- 6.23.1** 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.
- 6.23.2** 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.
- 6.23.3** OSE has published a Guide to Bid, Payment and Performance Bonds (see OSE website) to assist the Agency in fulfilling this obligation.

6.24 NOTICE TO PROCEED

- 6.24.1** After receiving and confirming the validity of the Certificate of Insurance and Performance and Payment Bonds, but not sooner, the Agency may issue the SE-390, Notice to Proceed, to the contractor. The Agency must issue an SE-390, Notice to Proceed, to the contractor on all contract awards whether within or over the Agency construction certification.
- 6.24.2** The SE-390, Notice to Proceed, should be issued within five days of receipt of an executed contract from the contractor along with a Performance Bond, a Labor and Material Payment Bond, and a Certificate of Insurance, all of which comply with the requirements of the contract documents.
- 6.24.3** The Agency must include the date of commencement of work in the SE-390, Notice to Proceed. The Agency must use the date of commencement established in the SE-390 for determining the date(s) of Substantial and Final Completion and the application of any Early Completion Award or Liquidated Damages. The Date of Commencement should be set at least 7 days after the date of the Notice to Proceed to allow the Contractor to mobilize its work forces. This time may be waived if approved by the contractor.
- 6.24.4** The Agency must send a copy of the SE-390, Notice to Proceed, along with copies of the executed contract, performance and payment bonds, and certificate of insurance to the OSE, for information only, on the same day it mails the Notice to the contractor.
- 6.24.5** These documents may be submitted electronically.

6.25 RETURN OF BID SECURITY AND DISPOSITION OF BIDS

- 6.25.1** Except for the three lowest responsive and responsible bidders, the Agency should return the bid securities of all other bidders within 10 days after the date of the bid opening. Upon execution of a contract, the Agency should, return the bid securities of the three lowest bidders.
- 6.25.2** The Agency must retain all bids until it has a fully executed contract. The Agency must retain the bid of the successful bidder in its procurement file.

**Table 6.4-1
PRE-BID CONFERENCE DISCUSSION ITEMS**

Discussion Items

GENERAL

1. Only the written word as contained in the Bid Documents, including any addenda that may be issued, is binding.
2. It is the bidders' responsibility to read and review all of the Bid Documents, including addenda.
3. Statements made by the A/E, agency and/or the OSE representative are for the sole purpose of calling the bidders' attention to items of importance in the Bid Documents.
4. All questions or requests for clarification must be submitted in writing. All responses will be made in the form of addenda to the bid documents.

SE-310, INVITATION FOR CONSTRUCTION SERVICES

1. *(When required)* Each bid shall have Bid Security of not less than 5% of the base bid amount.
2. *(When required)* The successful bidder shall provide a Performance Bond and a Labor and Material Payment Bond, each in the full amount of the contract price. Refer to paragraph 6.23 and Article 7 of the Instructions to Bidders.
3. Bidders and all subcontractors shall be licensed in accordance with the requirements of the Contractors' Licensing Board.
4. Review the time, date and location of the bid opening.
5. Bidders shall be responsible for having their bid at the designated place for receiving bids no later than the time set for the bid opening. Once the bidding has been declared closed, all late bids, including bids improperly delivered, shall be rejected as being nonresponsive.

INSTRUCTIONS TO BIDDERS (AIA A701-AS AMENDED BY OSE FORM 00201-1997 INSTRUCTIONS TO BIDDERS - SOUTH CAROLINA DIVISION OF PROCUREMENT SERVICES, OFFICE OF STATE ENGINEER VERSION)

1. Section 3.3, Substitutions:
 - a. Section 3.3.1: Materials and products listed in the Bid Documents establish a standard of required function, dimension, appearance and quality to be met by a proposed substitution.
 - b. Section 3.3.1: Reference in the Bid Documents to the words 'or equal' and 'or approved equal' shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition.
 - c. Section 3.3.2: Requests for substitutions must be submitted to the A/E at least 10 days prior to the bid date. Proof of equality of substitutions is the responsibility of the proposer. The A/E's decision to approve or disapprove of the requested substitutions shall be final.
 - d. Section 3.3.3: The A/E shall include in an addendum the approved substitutions. Substitution requests not approved by the A/E may be listed in an addendum at the A/E's option.
2. Section 3.4, Addenda:
 - a. Section 3.4.3: No addenda will be issued later than 120 hours prior to the date for receipt of bids, except addenda postponing the date of receipt of bids or withdrawing the invitation for bids (i.e., projects being bid at 2 PM on a Tuesday require that all addenda be issued no later than 2 PM of the prior Thursday).
 - b. Section 3.4.4: It is the bidder's responsibility to determine, prior to submitting a bid, that all addenda issued have been received. If the pre-bid is mandatory, the bidders should verify that their firm's name has been included in an addendum.
3. Section 4.1.4: Bidder shall not qualify his bid.
4. Section 4.3.1: Bids sent by mail or other special delivery service (UPS, FED-EX, etc.) should be labeled "Bid Enclosed".
5. Section 4.3.1: Bids shall be received at the address indicated prior to the time of the bid opening. Bids not received prior to the time of the bid opening shall be rejected as being nonresponsive.
6. Section 4.3.5: The official time for receipt of Bids will be determined by reference to the clock designated by the Owner's procurement officer or his/her designee.
7. Section 5.2.2: List of reasons for which bids will be rejected. Bidders should use this as a check list prior to submitting bid.

SE-330, LUMP SUM BID FORM

1. Page BF-1:
 - a. Item 2. Bidders shall indicate the form of the bid security.
 - b. Item 3. Bidders shall acknowledge all addenda.
 - c. Item 4. By submitting a bid, Bidders agree that the Base Bid price and the Bid Alternate(s) price(s) shall not be revoked or withdrawn for the number of calendar days indicated.
 - d. Item 6.1. Base Bid shall be shown in readable numbers only.
2. Page BF-1A (*when included*)
 - a. Item 6.2. Bidders shall check the box in front of “ADD TO” or “DEDUCT FROM” so as to clearly indicate the price adjustment to the Base Bid for each Alternate. All requested Alternates must be bid in order for the bid to be considered responsive.
 - b. Item 6.3. The Bidder should furnish requested unit prices. The agency reserves the right to include or not to include the unit prices in the contract and to negotiate unit prices with the Bidder. Unit prices have no bearing on the contract award with this bid form and should not be read at the bid opening.
3. Page BF-2
 - a. Note at bottom of page: If a Bid Alternate is accepted, the Subcontractors listed for the Bid Alternate shall be used for the work of both the Alternate and the Base Bid.
4. Page BF-2A
 - a. Item 1: Section 7 of the Bid Form sets forth a list of subcontractor specialties for which bidder is required to identify by name the subcontractor(s) Bidder will use to perform the work of each listed specialty. Bidder must identify only the subcontractor(s) who will perform the work and no others.
 - b. Item 2: For purposes of subcontractor listing, a Subcontractor is an entity who will perform work or render service to the prime contractor to or about the construction site. Material suppliers, manufacturers, and fabricators that will not perform physical work at the site of the project but will only supply materials or equipment to the bidder or proposed subcontractor(s) are not subcontractors and Bidder should not insert their names in the spaces provided on the bid form. Likewise, Bidder should not insert the names of sub-subcontractors in the spaces provided on the bid form but only the names of those entities with which bidder will contract directly.
 - c. Item 3: Bidder must only insert the names of subcontractors who are qualified to perform the work of the listed specialties as specified in the Bidding Documents and South Carolina Licensing Laws.
 - d. Item 4: If under the terms of the Bidding Documents, Bidder is qualified to perform the work of a specialty listed and Bidder does not intend to subcontract such work but to use Bidder’s own employees to perform such work, the Bidder must insert its own name in the space provided for that specialty.
 - e. Item 5: If Bidder intends to use multiple subcontractors to perform the work of a single specialty listing, Bidder must insert the name of each subcontractor Bidder will use, preferably separating the name of each by the word “**and**”. If Bidder intends to use both his own employees to perform a part of the work of a single specialty listing and to use one or more subcontractors to perform the remaining work for that specialty listing, Bidder must insert its own name and the name of each subcontractor, preferably separating the name of each with the word “**and**”.
 - f. Item 6: Bidder may not list subcontractors in the alternative nor in a form that may be reasonably construed at the time of bid opening as a listing in the alternative. A listing that requires subsequent explanation to determine whether or not it is a listing in the alternative is non-responsive. If Bidder intends to use multiple entities to perform the work for a single specialty listing, Bidder must clearly set forth on the bid form such intent. Bidder may accomplish this by simply inserting the word “**and**” between the names of each entity listed for that specialty. Owner will reject as non-responsive a listing that contains the names of multiple subcontractors separated by a blank space, the word “or”, a virgule (that is a /), or any separator that the Owner may reasonably interpret as a listing in the alternative.
 - g. Item 7: If Bidder is awarded the contract, Bidder must, except with the approval of the owner for good cause shown, use the listed entities to perform the work for which they are listed.
 - h. Item 8: If Bidder is awarded the contract, Bidder will not be allowed to substitute another entity as subcontractor in place of a subcontractor listed in Section 7 of the Bid except for one or more of the reasons allowed by the SC Code of Laws.
 - i. Item 9: A Bidder’s failure to insert a name for each listed specialty subcontractor will render the Bid non-responsive.
5. Page BF-3:
 - a. Time of Contract Performance and Liquidated Damages
 - (1) Section 9(a), Contract Time: Indicate that the DATE OF COMMENCEMENT shall be established in the Notice to Proceed.
 - (2) Section 9(a), Contract Time: Review the number of Calendar Days allowed for construction to reach Substantial Completion and Final Completion.
 - b. Section 9(b), Liquidated Damages: Review the Liquidated Damages amounts to be applied for failure to reach Substantial Completion within the contract time limit.
 - c. Section 11: If Bidder provides an electronic Bid Bond, the Bidder must indicate the electronic bid bond number and provide the proper signature and title in the spaces provided.

6. Page BF-4
- a. By signing the Bid, Bidder reaffirms all representations and certifications made by both the person signing and the Bidder in Article 2 of the Instructions to Bidders.
 - (1) Instructions to Bidders § 2.2, Certification of Independent Price Determination.
 - (2) Instructions to Bidders § 2.3, Certification of a Drug Free Workplace
 - (3) Instructions to Bidders § 2.4, Certification Regarding Debarment and other Responsibility Matters
 - (4) Instructions to Bidders § 2.5, Ethics Certification
 - (5) Instructions to Bidders § 2.6, Restrictions Applicable to Bidders & Gifts
 - (6) Instructions to Bidders § 2.7, Iran Divestment Act Certification
 - (7) Instructions to Bidders § 2.8, Open Trade Representation
 - b. Provide all of the requested information on page BF-4.

AIA A201 & OSE FORM 00811, STANDARD SUPPLEMENTARY CONDITIONS

AIA DOCUMENT A201-2007 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION- SOUTH CAROLINA DIVISION OF PROCUREMENT SERVICES, OFFICE OF STATE ENGINEER VERSION

1. Section 3.7.1: Requirements for general contractors to obtain business and other licenses, but not building permits.
2. Review typical and special inspection requirements for the project. Include requirements for the contractor to notify the appropriate inspecting entity when the construction is ready for a particular inspection.
3. Article 11, Insurance and Bonds:
 - a. Bidders should verify their ability to comply with all insurance and bonding requirements of the project prior to submittal of their bid.
 - b. Subparagraph 11.1.2: Contractor's aggregate limits of Liability Insurance shall apply in total to this contract only. This requirement shall be identified on the insurance certificate or by an attached policy amendment.
4. Subparagraph 11.3.1, Property Insurance: Contractor is to provide Builders Risk Policy to cover interest of all parties.

CONCLUSION

1. It is the intent of the agency to award a Contract for the lowest responsive bid submitted by a responsible bidder.
2. Remind all attendees to sign the sign-in sheet and provide all requested information before leaving the pre-bid.
3. Emphasize the following:
 - a. Late bids shall be rejected as non-responsive.
 - b. Bids without proper bid security, when required, shall be rejected as non-responsive.
 - c. Bid Bonds, if submitted, must be shall be written on AIA Document A310, Bid Bond or an equivalent form. A valid electronic bid bond is considered to be on the proper form.
 - d. Qualified bids shall be rejected as nonresponsive.
 - e. Bid **ALL** alternates included on the bid form provided.
 - f. List **ALL** subcontractors required to be listed on the bid form.
 - g. Successful bidder will be required to provide Builders Risk Insurance covering the interest of all parties.
4. Open the pre-bid meeting for questions by bidders.
5. Questions after the pre-bid conference and during the bidding stage concerning OSE front-end documents should be directed to the A/E who will, when required, discuss with the OSE.
6. The A/E will, if necessary, provide answers to questions and other clarifying information to bidders by addendum.
7. All lines of communication during the bidding stage should be through the A/E.