

South Carolina General Assembly
123rd Session, 2019-2020

S. 530

STATUS INFORMATION

General Bill

Sponsors: Senator Leatherman

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Introduced in the Senate on February 19, 2019

Introduced in the House on April 3, 2019

Last Amended on March 28, 2019

Passed by the General Assembly on May 9, 2019

Summary: Procurement Code

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
2/19/2019	Senate	Introduced and read first time (Senate Journal-page 5)
2/19/2019	Senate	Referred to Committee on Finance (Senate Journal-page 5)
3/21/2019	Senate	Committee report: Favorable with amendment Finance (Senate Journal-page 11)
3/27/2019	Senate	Committee Amendment Adopted (Senate Journal-page 58)
3/27/2019	Senate	Read second time (Senate Journal-page 58)
3/27/2019	Senate	Roll call Ayes-38 Nays-0 (Senate Journal-page 58)
3/28/2019	Senate	Amended (Senate Journal-page 13)
4/2/2019	Senate	Read third time and sent to House (Senate Journal-page 22)
4/2/2019	Senate	Roll call Ayes-44 Nays-0 (Senate Journal-page 22)
4/3/2019	House	Introduced and read first time (House Journal-page 7)
4/3/2019	House	Referred to Committee on Ways and Means (House Journal-page 7)
5/2/2019	House	Committee report: Favorable Ways and Means (House Journal-page 1)
5/8/2019	House	Requests for debate-Rep(s). Hill (House Journal-page 55)
5/8/2019	House	Read second time (House Journal-page 55)
5/8/2019	House	Roll call Yeas-93 Nays-7 (House Journal-page 63)
5/9/2019	House	Read third time and enrolled

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VERSIONS OF THIS BILL

[2/19/2019](#)

[3/21/2019](#)

[3/27/2019](#)

[3/28/2019](#)

[5/2/2019](#)

1 ~~Indicates Matter Stricken~~
2 Indicates New Matter
3
4 COMMITTEE REPORT
5 May 2, 2019
6

7 **S. 530**

8
9 Introduced by Senator Leatherman

10
11 S. Printed 5/2/19--H.
12 Read the first time April 3, 2019.

13 _____
14
15 **THE COMMITTEE ON WAYS AND MEANS**

16 To whom was referred a Bill (S. 530) to amend Section 11-35-20,
17 Code of Laws of South Carolina, 1976, relating to the purpose and
18 policies of the Consolidated Procurement Code, etc., respectfully

19 **REPORT:**

20 That they have duly and carefully considered the same and
21 recommend that the same do pass:

22
23 GILDA COBB-HUNTER for Committee.
24 _____
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A BILL

11 TO AMEND SECTION 11-35-20, CODE OF LAWS OF SOUTH
12 CAROLINA, 1976, RELATING TO THE PURPOSE AND
13 POLICIES OF THE CONSOLIDATED PROCUREMENT CODE,
14 SO AS TO PROVIDE THAT THE CODE MUST BE
15 CONSTRUED AND APPLIED TO PROMOTE THE
16 UNDERLYING PURPOSES AND POLICIES; BY ADDING
17 SECTION 11-35-27 SO AS TO PROVIDE THAT NO PART OF
18 THE CHAPTER MAY BE CONSIDERED IMPLIEDLY
19 REPEALED BY SUBSEQUENT LEGISLATION; TO AMEND
20 SECTION 11-35-40, RELATING TO THE APPLICATION OF
21 THE PROCUREMENT CODE, SO AS TO PROVIDE THAT
22 CERTAIN FAILURES TO COMPLY ARE NOT SUBJECT TO
23 REVIEW UNDER ARTICLE 17; TO AMEND SECTION
24 11-35-70, RELATING TO SCHOOL DISTRICTS SUBJECT TO
25 THE PROCUREMENT CODE, SO AS TO CHANGE THE
26 REFERENCE TO THE OFFICE OF GENERAL SERVICES TO
27 THE DIVISION OF PROCUREMENT SERVICES; TO AMEND
28 SECTION 11-35-210, RELATING TO CERTAIN
29 DETERMINATIONS, SO AS TO PROVIDE THAT ALL
30 FINDINGS, DETERMINATIONS, DECISIONS, POLICIES,
31 AND PROCEDURES ALLOWED BY THIS CHAPTER ARE
32 EXEMPT FROM CERTAIN REQUIREMENTS; TO AMEND
33 SECTION 11-35-310, RELATING TO DEFINITIONS, SO AS TO
34 AMEND CERTAIN DEFINITIONS AND ADD DEFINITIONS
35 OF "BUSINESS DAY", "PERSON", AND "PUBLIC FUNDS";
36 TO AMEND SECTION 11-35-410, RELATING TO PUBLIC
37 ACCESS TO PROCUREMENT INFORMATION, SO AS TO
38 PROVIDE THAT A GOVERNMENTAL BODY MAY KEEP
39 PORTIONS OF A SOLICITATION CONFIDENTIAL AND
40 PROVIDE FOR CERTAIN WRITTEN DISCLOSURES; TO
41 AMEND SECTION 11-35-510, RELATING TO THE
42 CENTRALIZATION OF MATERIALS MANAGEMENT

1 AUTHORITY, SO AS TO PROVIDE THAT THE VESTING
2 AUTHORITY IS ALSO SUBJECT TO SECTION 11-35-1560; TO
3 AMEND SECTION 11-35-530, RELATING TO ADVISORY
4 COMMITTEES, SO AS TO REMOVE CERTAIN
5 REQUIREMENTS OF THE BOARD WORKING IN
6 ACCORDANCE WITH REGULATIONS OF THE BOARD; TO
7 AMEND SECTION 11-35-540, RELATING TO THE
8 AUTHORITY AND DUTIES OF THE BOARD, SO AS TO
9 REMOVE CERTAIN REQUIREMENTS OF THE CHIEF
10 EXECUTIVE OFFICER IN RELATION TO A DESIGNATED
11 BOARD OFFICE; TO AMEND SECTION 11-35-710,
12 RELATING TO CERTAIN EXEMPTIONS, SO AS TO REQUIRE
13 THE STATE FISCAL ACCOUNTABILITY AUTHORITY TO
14 MAINTAIN AND POST PUBLICLY A RUNNING LIST OF ALL
15 CURRENTLY EFFECTIVE ACTIONS TAKEN BY THE
16 BOARD; TO AMEND SECTION 11-35-810, RELATING TO
17 THE CREATION OF THE MATERIALS MANAGEMENT
18 OFFICE, SO AS TO CHANGE THE OFFICE OF GENERAL
19 SERVICES TO THE DIVISION OF PROCUREMENT
20 SERVICES; TO AMEND SECTION 11-35-820, RELATING TO
21 THE CREATION OF THE INFORMATION TECHNOLOGY
22 MANAGEMENT OFFICE, SO AS TO PROVIDE THAT THE
23 OFFICE IS RESPONSIBLE FOR ADMINISTERING ALL
24 PROCUREMENT AND CONTRACTING ACTIVITIES
25 UNDERTAKEN FOR GOVERNMENTAL BODIES
26 INVOLVING INFORMATION TECHNOLOGY; TO AMEND
27 SECTION 11-35-1210, RELATING TO CERTAIN
28 CERTIFICATION, SO AS TO PROVIDE THAT UP TO
29 CERTAIN DOLLAR AMOUNTS AN INDIVIDUAL
30 GOVERNMENTAL BODY MAY MAKE DIRECT
31 PROCUREMENTS NOT UNDER TERM CONTRACTS; TO
32 AMEND SECTION 11-35-1230, RELATING TO AUDITING
33 AND FISCAL REPORTING, SO AS TO REMOVE THE
34 REQUIREMENT THAT THE DIVISION OF BUDGET
35 ANALYSIS WITH THE COMPTROLLER GENERAL SHALL
36 ASSUME RESPONSIBILITY FOR CERTAIN FISCAL
37 REPORTING PROCEDURES; TO AMEND SECTION
38 11-35-1410, RELATING TO DEFINITIONS, SO AS TO ADD
39 DEFINITIONS FOR "COMMERCIAL PRODUCT" AND
40 "COMMERCIALLY AVAILABLE OFF-THE-SHELF
41 PRODUCT"; TO AMEND SECTION 11-35-1510, RELATING
42 TO THE METHODS OF SOURCE SELECTION, SO AS TO ADD
43 SECTION 11-35-1535 TO THE LIST OF EXCEPTIONS; TO

1 AMEND SECTION 11-35-1520, RELATING TO COMPETITIVE
2 SEALED BIDDING, SO AS TO REMOVE CERTAIN
3 REQUIREMENTS FOR DISCUSSION WITH BIDDERS; TO
4 AMEND SECTION 11-35-1525, RELATING TO COMPETITIVE
5 FIXED PRICE BIDDING, SO AS TO REMOVE CERTAIN
6 PROVISIONS FOR DISCUSSION WITH RESPONSIVE
7 BIDDERS AND REMEDIES; TO AMEND SECTION
8 11-35-1528, RELATING TO COMPETITIVE BEST VALUE
9 BIDDING, SO AS TO REMOVE CERTAIN PROVISIONS FOR
10 DISCUSSION WITH RESPONSIVE BIDDERS; TO AMEND
11 SECTION 11-35-1529, RELATING TO COMPETITIVE ONLINE
12 BIDDING, SO AS TO PROVIDE FOR PUBLIC NOTICE; TO
13 AMEND SECTION 11-35-1530, RELATING TO COMPETITIVE
14 SEALED PROPOSALS, SO AS TO PROVIDE THAT
15 OFFERORS MUST BE ACCORDED FAIR AND EQUAL
16 TREATMENT WITH RESPECT TO ANY OPPORTUNITY FOR
17 DISCUSSIONS; BY ADDING SECTION 11-35-1535 SO AS TO
18 PROVIDE FOR COMPETITIVE NEGOTIATIONS AND TO
19 PROVIDE CERTAIN REQUIREMENTS; TO AMEND SECTION
20 11-35-1540, RELATING TO NEGOTIATIONS AFTER AN
21 UNSUCCESSFUL COMPETITIVE SEALED BIDDING, SO AS
22 TO PROVIDE THAT THE PROCUREMENT OFFICER, NOT
23 THE PROCURING AGENCY, SHALL CONSIDER IF A BID IS
24 UNREASONABLE; TO AMEND SECTION 11-35-1550,
25 RELATING TO CERTAIN SMALL PURCHASE PROCEDURES,
26 SO AS TO AMEND CERTAIN DOLLAR AMOUNT CAPS; TO
27 AMEND SECTION 11-35-1560, RELATING TO SOLE SOURCE
28 PROCUREMENT, SO AS TO PROVIDE FOR ADEQUATE
29 PUBLIC NOTICE; TO AMEND SECTION 11-35-1570,
30 RELATING TO EMERGENCY PROCUREMENTS, SO AS TO
31 PROVIDE CERTAIN NOTICE OF THE AWARD; BY ADDING
32 SECTION 11-35-1610 SO AS TO PROVIDE THAT A CHANGE
33 OR MODIFICATION IN A CONTRACT MAY NOT ALTER A
34 CONTRACT IN A MANNER INCONSISTENT WITH THIS
35 CODE; TO AMEND SECTION 11-35-1810, RELATING TO THE
36 RESPONSIBILITY OF BIDDERS AND OFFERORS, SO AS TO
37 PROVIDE THAT CERTAIN COMMUNICATION IS
38 PRIVILEGED; TO AMEND SECTION 11-35-1830, RELATING
39 TO COST OR PRICING DATA, SO AS TO ADD COMPETITIVE
40 NEGOTIATIONS PURSUANT TO SECTION 11-35-1535; BY
41 ADDING SECTION 11-35-1840 SO AS TO PROVIDE THAT
42 THE BOARD MAY PROMULGATE CERTAIN
43 REGULATIONS; BY ADDING SECTION 11-35-2015 SO AS TO

1 PROVIDE THAT A CONTRACT OR AMENDMENT IS NOT
2 EFFECTIVE AGAINST A GOVERNMENTAL BODY UNLESS
3 THE CONTRACT OR AMENDMENT IS IN WRITING AND
4 SIGNED BY A CERTAIN OFFICER; TO AMEND SECTION
5 11-35-2030, RELATING TO MULTITERM CONTRACTS, SO
6 AS TO PROVIDE THAT EVERY CONTRACT WITH A
7 POTENTIAL DURATION EXCEEDING SEVEN YEARS MUST
8 BE APPROVED BY THE BOARD; BY ADDING SECTION
9 11-35-2040 SO AS TO PROVIDE THAT CERTAIN LAWS ARE
10 INAPPLICABLE TO CONTRACTS FOR THE PROCUREMENT
11 OF COMMERCIAL PRODUCTS; BY ADDING SECTION
12 11-35-2050 SO AS TO PROVIDE THAT CERTAIN TERMS OR
13 CONDITIONS IN A CONTRACT ARE VOID; TO AMEND
14 SECTION 11-35-2410, RELATING TO THE FINALITY OF
15 DETERMINATIONS, SO AS TO ADD CERTAIN SECTIONS;
16 TO AMEND SECTION 11-35-2420, RELATING TO THE
17 REPORTING OF ANTICOMPETITIVE PRACTICES, SO AS TO
18 PROVIDE THAT CERTAIN COMMUNICATIONS TO THE
19 OFFICE OF THE ATTORNEY GENERAL ARE PRIVILEGED;
20 TO AMEND SECTION 11-35-3010, RELATING TO THE
21 CHOICE OF PROJECT DELIVERY METHOD, SO AS TO
22 PROVIDE THAT THE USE OF CERTAIN PROJECT
23 DELIVERY METHODS MUST BE APPROVED BY THE
24 BOARD; TO AMEND SECTION 11-35-3015, RELATING TO
25 THE SOURCE SELECTION METHODS ASSIGNED TO
26 PROJECT DELIVERY METHODS, SO AS TO ADD
27 REFERENCES TO SECTION 11-35-1530 AND SECTION
28 11-35-1535; TO AMEND SECTION 11-35-3020, RELATING TO
29 ADDITIONAL BIDDING PROCEDURES FOR
30 CONSTRUCTION PROCUREMENT, SO AS TO PROVIDE
31 THAT ADEQUATE NOTICE MUST BE GIVEN; TO AMEND
32 SECTION 11-35-3023, RELATING TO PREQUALIFICATION
33 ON STATE CONSTRUCTION, SO AS TO REMOVE CERTAIN
34 REQUIREMENTS FOR A REQUEST FOR QUALIFICATIONS;
35 TO AMEND SECTION 11-35-3024, RELATING TO
36 ADDITIONAL PROCEDURES APPLICABLE TO
37 PROCUREMENT OF CERTAIN PROJECT DELIVERY
38 METHODS, SO AS TO PROVIDE THAT CERTAIN
39 PROVISIONS DO NOT APPLY IF COMPETITIVE
40 NEGOTIATIONS ARE CONDUCTED; TO AMEND SECTION
41 11-35-3030, RELATING TO BOND AND SECURITY, SO AS TO
42 PROVIDE THAT CERTAIN SOLICITATIONS MAY PROVIDE
43 FOR CERTAIN BOND AND SECURITY REQUIREMENTS; TO

1 AMEND SECTION 11-35-3040, RELATING TO CONTRACT
2 CLAUSES AND THEIR ADMINISTRATION, SO AS TO
3 PROVIDE THAT CERTAIN CONTRACTS MAY INCLUDE
4 CLAUSES PROVIDING FOR THE UNILATERAL RIGHT OF A
5 GOVERNMENTAL BODY TO ORDER IN WRITING CERTAIN
6 CHANGES WITHIN THE GENERAL SCOPE OF THE
7 CONTRACT; TO AMEND SECTION 11-35-3070, RELATING
8 TO THE APPROVAL OF CERTAIN CHANGES WHICH DO
9 NOT ALTER SCOPE OR INTENT OR EXCEED APPROVED
10 BUDGET, SO AS TO PROVIDE THAT A GOVERNMENTAL
11 BODY MAY APPROVE CERTAIN AMENDMENTS
12 CONSISTENT WITH ANY APPLICABLE REGULATION OF
13 THE BOARD; TO AMEND SECTION 11-35-3220, RELATING
14 TO QUALIFICATIONS-BASED SELECTION PROCEDURES,
15 SO AS TO PROVIDE THAT ADEQUATE NOTICE OF THE
16 INVITATION MUST BE GIVEN; TO AMEND SECTION
17 11-35-3230, RELATING TO THE EXCEPTION FOR SMALL
18 ARCHITECT-ENGINEER AND LAND SURVEYING
19 SERVICES CONTRACTS, SO AS TO PROVIDE THAT A
20 GOVERNMENTAL BODY MAY NOT NEGOTIATE WITH A
21 FIRM UNLESS ANY UNSUCCESSFUL NEGOTIATIONS
22 WITH A DIFFERENT FIRM HAVE BEEN CONCLUDED IN
23 WRITING; BY ADDING SECTION 11-35-3305 SO AS TO
24 PROVIDE THAT A PROCUREMENT OFFICER MAY
25 ESTABLISH CONTRACTS PROVIDING FOR AN INDEFINITE
26 QUANTITY OF CERTAIN SUPPLIES, SERVICES, OR
27 INFORMATION TECHNOLOGY; TO AMEND SECTION
28 11-35-3310, RELATING TO INDEFINITE DELIVERY
29 CONTRACTS, SO AS TO REMOVE PROVISIONS RELATING
30 TO CONSTRUCTION SERVICES; BY ADDING SECTION
31 11-35-3320 SO AS TO DEFINE "TASK ORDER CONTRACT"
32 AND TO PROVIDE WHEN A GOVERNMENTAL BODY MAY
33 ENTER INTO A TASK ORDER CONTRACT; TO AMEND
34 SECTION 11-35-3410, RELATING TO CONTRACT CLAUSES
35 AND THEIR ADMINISTRATION, SO AS TO PROVIDE THAT
36 CERTAIN CONTRACTS MAY INCLUDE CLAUSES
37 PROVIDING FOR THE UNILATERAL RIGHT OF A
38 GOVERNMENTAL BODY TO ORDER IN WRITING CERTAIN
39 CHANGES WITHIN THE GENERAL SCOPE OF THE
40 CONTRACT; TO AMEND SECTION 11-35-3820, RELATING
41 TO THE ALLOCATION OF PROCEEDS FOR SALE OR
42 DISPOSAL OF SURPLUS SUPPLIES, SO AS TO CHANGE
43 REFERENCES TO THE DIVISION OF GENERAL SERVICES

1 TO THE DEPARTMENT OF ADMINISTRATION; TO AMEND
2 SECTION 11-35-3830, RELATING TO TRADE-IN SALES, SO
3 AS TO CHANGE REFERENCES TO THE BOARD TO THE
4 DEPARTMENT OF ADMINISTRATION; TO AMEND
5 SECTION 11-35-3840, RELATING TO LICENSING FOR
6 PUBLIC SALE OF CERTAIN PUBLICATIONS AND
7 MATERIALS, SO AS TO CHANGE A REFERENCE TO THE
8 DIVISION OF GENERAL SERVICES TO THE DIVISION OF
9 PROCUREMENT SERVICES; TO AMEND SECTION
10 11-35-3850, RELATING TO THE SALE OF UNSERVICEABLE
11 SUPPLIES, SO AS TO CHANGE REFERENCES TO THE
12 BOARD TO THE DEPARTMENT OF ADMINISTRATION; TO
13 AMEND SECTION 11-35-4210, RELATING TO CERTAIN
14 PROTESTS AND PROCEDURES, SO AS TO PROVIDE THAT
15 AN ACTUAL BIDDER, OFFEROR, CONTRACTOR, OR
16 SUBCONTRACTOR WHO IS AGGRIEVED SHALL NOTIFY
17 THE APPROPRIATE OFFICER IN WRITING; TO AMEND
18 SECTION 11-35-4215, RELATING TO THE POSTING OF
19 BOND OR IRREVOCABLE LETTER OF CREDIT, SO AS TO
20 PROVIDE THAT THE AMOUNT RECOVERED MAY NOT
21 EXCEED FIFTEEN THOUSAND DOLLARS; TO AMEND
22 SECTION 11-35-4220, RELATING TO THE AUTHORITY TO
23 DEBAR OR SUSPEND, SO AS TO PROVIDE THAT A
24 VIOLATION OF THE ETHICS, GOVERNMENT
25 ACCOUNTABILITY, AND CAMPAIGN REFORM ACT OF
26 1991 IS A CAUSE FOR DEBARMENT; TO AMEND SECTION
27 11-35-4230, RELATING TO THE AUTHORITY TO RESOLVE
28 CONTRACT AND BREACH OF CONTRACT
29 CONTROVERSIES, SO AS TO PROVIDE THAT THE
30 DIVISION OF PROCUREMENT SERVICES MAY INITIATE
31 AND PURSUE RESOLUTION OF CERTAIN CONTRACT
32 CONTROVERSIES; TO AMEND SECTION 11-35-4310,
33 RELATING TO SOLICITATIONS OR AWARDS IN
34 VIOLATION OF THE LAW, SO AS TO PROVIDE THAT
35 CERTAIN REMEDIES MAY BE GRANTED ONLY AFTER
36 REVIEW; BY ADDING SECTION 11-35-4315 SO AS TO
37 PROVIDE THAT THE BOARD MAY PROVIDE BY
38 REGULATION APPROPRIATE ACTION WHERE A
39 CONTRACT AWARD OR MODIFICATION IS IN VIOLATION
40 OF THE PROCUREMENT CODE; BY ADDING SECTION
41 11-35-4340 SO AS TO PROVIDE THAT THERE IS NO
42 REMEDY AGAINST THE STATE OTHER THAN THOSE
43 PROVIDED IN THIS CHAPTER; TO AMEND SECTION

1 11-35-4410, RELATING TO THE PROCUREMENT REVIEW
2 PANEL, SO AS TO PROVIDE THAT AN APPEAL ONLY MAY
3 BE MADE TO THE COURT OF APPEALS; BY ADDING
4 SECTION 11-35-4425 SO AS TO PROVIDE THAT IF A FINAL
5 ORDER IS NOT APPEALED THE CHIEF PROCUREMENT
6 OFFICER MAY FILE A CERTIFIED COPY OF THE FINAL
7 RULING; BY ADDING SECTION 11-35-4430 SO AS TO
8 PROVIDE THAT PANEL MEMBERS MAY NOT
9 COMMUNICATE IN CONNECTION WITH ANY ISSUE OF
10 FACT OR ISSUE OF LAW; TO AMEND SECTION 11-35-4610,
11 RELATING TO DEFINITIONS, SO AS TO EXPAND ON THE
12 DEFINITION OF "PUBLIC PROCUREMENT UNIT"; TO
13 AMEND SECTION 11-35-4810, RELATING TO
14 COOPERATIVE PURCHASING AUTHORIZED, SO AS TO
15 PROVIDE THAT CERTAIN COOPERATIVE PURCHASING
16 WITH OTHER STATES MUST BE THROUGH CONTRACTS
17 AWARDED THROUGH FULL AND OPEN COMPETITION; TO
18 AMEND SECTION 11-35-4830, RELATING TO THE SALE,
19 ACQUISITION, OR USE OF SUPPLIES BY A PUBLIC
20 PROCUREMENT UNIT, SO AS TO PROVIDE THAT A PUBLIC
21 PROCUREMENT UNIT MAY SELL TO, ACQUIRE FROM, OR
22 USE ANY SUPPLIES BELONGING TO ANOTHER PUBLIC
23 PROCUREMENT UNIT INDEPENDENT OF CERTAIN
24 REQUIREMENTS; TO AMEND SECTION 11-35-4840,
25 RELATING TO THE COOPERATIVE USE OF SUPPLIES OR
26 SERVICES, SO AS TO PROVIDE THAT ANY PUBLIC
27 PROCUREMENT UNIT MAY ENTER INTO AN AGREEMENT
28 INDEPENDENT OF CERTAIN REQUIREMENTS; TO AMEND
29 SECTION 11-35-4860, RELATING TO THE SUPPLY OF
30 PERSONNEL, INFORMATION, AND TECHNICAL SERVICES,
31 SO AS TO PROVIDE THAT THE PROCEEDS FROM CERTAIN
32 SALES MUST BE PLACED IN A REVENUE ACCOUNT; TO
33 AMEND SECTION 11-35-4870, RELATING TO THE USE OF
34 PAYMENTS RECEIVED BY A SUPPLYING PUBLIC
35 PROCUREMENT UNIT, SO AS TO PROVIDE THAT CERTAIN
36 PAYMENTS MUST BE DEPOSITED IN A SPECIAL REVENUE
37 ACCOUNT; TO AMEND SECTION 11-35-4880, RELATING TO
38 PUBLIC PROCUREMENT UNITS IN COMPLIANCE WITH
39 CODE REQUIREMENTS, SO AS TO REMOVE A REFERENCE
40 TO EXTERNAL PROCUREMENT ACTIVITY; TO AMEND
41 SECTION 1-23-600 AS AMENDED, RELATING TO THE
42 SOUTH CAROLINA ADMINISTRATIVE LAW COURT
43 HEARINGS AND PROCEEDINGS, SO AS TO PROVIDE THAT

1 AN APPEAL FROM THE PROCUREMENT REVIEW PANEL IS
2 TO THE COURT OF APPEALS; TO AMEND SECTION
3 57-1-490, RELATING TO THE DEPARTMENT OF
4 TRANSPORTATION ANNUAL AUDITS, SO AS TO REMOVE
5 THE REQUIREMENT THAT THE DEPARTMENT'S
6 INTERNAL PROCUREMENT OPERATION MUST BE
7 AUDITED ANNUALLY; BY ADDING SECTION 1-11-190 SO
8 AS TO PROVIDE RESPONSIBILITIES FOR THE
9 DEPARTMENT OF ADMINISTRATION; TO REPEAL
10 SECTION 11-35-1580 RELATING TO INFORMATION
11 TECHNOLOGY PROCUREMENTS; TO REDESIGNATE
12 ARTICLE 10, CHAPTER 35, TITLE 11 AS "INDEFINITE
13 QUANTITY CONTRACTS; AND TO RECODIFY SECTIONS
14 11-35-35, RELATING TO SURETY BONDS, 11-35-55,
15 RELATING TO THE PURCHASE OF GOODS OR SERVICES
16 FROM AN ENTITY EMPLOYING PRISON INMATES, AND
17 11-35-70, RELATING TO SCHOOL DISTRICTS SUBJECT TO
18 THE PROCUREMENT CODE.

19

20 Whereas, the General Assembly finds that it adopted a modified
21 version of the 1979 ABA Model Procurement Code for State and
22 Local Governments, when it enacted 1981 Act No. 148. Since then,
23 the ABA has revised its recommended model by adopting the 2000
24 ABA Model Procurement Code for State and Local Governments, a
25 primary goal of which was to encourage the competitive use of new
26 forms of project delivery in public construction procurement. With
27 the enactment of Act 174 in 2008, the General Assembly adopted a
28 modified version of the changes made by the 2000 ABA Model
29 Code. In recognition of the State's long history of reliance on the
30 model code, the applicable official comments to the model code, and
31 the relevant and applicable construction given to the model code,
32 should be examined as persuasive authority for interpreting and
33 construing the South Carolina Consolidated Procurement Code; and

34

35 Whereas, it is the intent of the General Assembly that agencies and
36 institutions comply with Section 11-35-1530, which limits use of
37 this source selection method to circumstances in which the use of
38 competitive sealed bidding is either not practicable or not
39 advantageous to the State; accordingly, the basis for such
40 determinations must be specified with particularity and must be
41 documented in sufficient detail to satisfy the requirements of audit.
42 The Materials Management Officer is responsible for controlling the
43 use of RFPs by the respective offices of the Division of Procurement

1 Services and for monitoring the adequacy of such determinations
2 statewide; and

3

4 Whereas, the General Assembly finds that thorough and considered
5 acquisition planning, including appropriate market research,
6 industry-government communications, requirements definitions,
7 risk analysis, and contract administration plans, is necessary to
8 provide increased economy in state procurement activities, to
9 maximize to the fullest extent practicable the purchasing values of
10 funds, and to foster effective broad-based competition for public
11 procurement, all of which are key purposes of the procurement laws;
12 accordingly, the head of each using agency, as defined in Section
13 11-35-310, is expected to have in place an effective system to
14 implement such planning, and the State Fiscal Accountability
15 Authority is expected to promulgate regulations, establishing
16 guidelines for and requiring such planning, and to audit for
17 compliance with such regulations; and

18

19 Whereas, the General Assembly finds that acquisition policies that
20 more closely resemble those of the commercial marketplace,
21 encourage the acquisition of commercial items, and, where possible,
22 allow use of terms and conditions accepted in the marketplace, will
23 promote efficiency and economy in contracting and avoid
24 unnecessary burdens for agencies and contractors. Accordingly, it
25 adopts simplified procedures for the acquisition of commercially
26 available off-the-shelf products, including higher dollar thresholds
27 for agency purchases of those products. Now, therefore,

28

29 Be it enacted by the General Assembly of the State of South
30 Carolina:

31

32 SECTION 1. Section 11-35-20 of the 1976 Code is amended to
33 read:

34

35 “Section 11-35-20. (1) This code must be construed and applied
36 to promote underlying purposes and policies.

37 (2) The underlying purposes and policies of this code are:

38 (a) to provide increased economy in state procurement
39 activities and to maximize to the fullest extent practicable the
40 purchasing values of funds while ensuring that procurements are the
41 most advantageous to the State and in compliance with the
42 provisions of the Ethics Government Accountability and Campaign
43 Reform Act;

1 (b) to foster effective broad-based competition for public
2 procurement within the free enterprise system;
3 (c) to develop procurement capability responsive to
4 appropriate user needs;
5 (d) to consolidate, clarify, and modernize the law governing
6 procurement in this State and permit the continued development of
7 explicit and thoroughly considered procurement policies and
8 practices;
9 (e) to require the adoption of competitive procurement laws
10 and practices by units of state and local governments;
11 (f) to ensure the fair and equitable treatment of all persons
12 who deal with the procurement system which will promote
13 increased public confidence in the procedures followed in public
14 procurement;
15 (g) to provide safeguards for the maintenance of a
16 procurement system of quality and integrity with clearly defined
17 rules for ethical behavior on the part of all persons engaged in the
18 public procurement process; and
19 (h) to develop an efficient and effective means of delegating
20 roles and responsibilities to the various government procurement
21 officers.”

22
23 SECTION 2. Article 1, Chapter 35, Title 11 of the 1976 Code is
24 amended by adding:

25
26 “Section 11-35-27. No part of this chapter may be considered to
27 be impliedly repealed by subsequent legislative enactment if such
28 construction of the subsequent legislative enactment can be
29 reasonably avoided.”

30
31 SECTION 3. Section 11-35-40(2) and (3) of the 1976 Code is
32 amended to read:

33
34 “(2) Application to State Procurement. This code applies to every
35 procurement or expenditure of funds by this State under contract
36 acting through a governmental body as herein defined irrespective
37 of the source of the funds, including federal assistance monies,
38 except as specified in Section 11-35-40(3) (Compliance with
39 Federal Requirements) and except that this code does not apply to
40 gifts, to the issuance of grants, or to contracts between public
41 procurement units, except as provided in Article 19
42 (Intergovernmental Relations). Notwithstanding the foregoing, the
43 provisions of Article 23 (Statewide Provisions) apply as provided

1 therein. It also shall apply to the disposal of state supplies as
2 provided in Article 15 (Supply Management). No state agency or
3 subdivision thereof may sell, lease, or otherwise alienate or obligate
4 telecommunications and information technology infrastructure of
5 the State by temporary proviso and unless provided for in the
6 general laws of the State.

7 (3) Compliance with Federal Requirements. Where a
8 procurement involves the expenditure of federal assistance, grant,
9 or contract funds, the governmental body also shall comply with
10 federal laws (including authorized regulations) as are mandatorily
11 applicable and which are not presently reflected in this code;
12 however, failure to comply with the foregoing is not subject to
13 review under Article 17. Notwithstanding, where federal assistance,
14 grant, or contract funds are used in a procurement by a governmental
15 body as defined in Section 11-35-310(18), this code, including any
16 requirements that are more restrictive than federal requirements,
17 must be followed, except to the extent such action would render the
18 governmental body ineligible to receive federal funds whose receipt
19 is conditioned on compliance with mandatorily applicable federal
20 law. In those circumstances, the solicitation must identify and
21 explain the impact of such federal laws on the procurement process,
22 including any required deviation from this code.”

23
24 SECTION 4. Section 11-35-70 of the 1976 Code is amended to
25 read:

26
27 “Section 11-35-70. Irrespective of the source of funds, any school
28 district whose budget of total expenditures, including debt service,
29 exceeds seventy-five million dollars annually is subject to the
30 provisions of Chapter 35, Title 11, and shall notify the Director of
31 the ~~Office of General~~ Division of Procurement Services of the State
32 Fiscal Accountability Authority of its expenditures within ninety
33 days after the close of its fiscal year. However, if a district has its
34 own procurement code which is, in the written opinion of the ~~Office~~
35 ~~of General~~ Division of Procurement Services of the State Fiscal
36 Accountability Authority, substantially similar to the provisions of
37 the South Carolina Consolidated Procurement Code, the district is
38 exempt from the provisions of the South Carolina Consolidated
39 Procurement Code except for a procurement audit which must be
40 performed every three years by an audit firm approved by the ~~Office~~
41 ~~of General~~ Division of Procurement Services. Costs associated with
42 the internal review and audits are the responsibility of the school
43 district and will be paid to the entity performing the audit.”

1

2 SECTION 5. Section 11-35-210 of the 1976 Code is amended to
3 read:

4

5 “Section 11-35-210. (A) Written determinations expressly
6 required by the code or regulations must be retained in an official
7 contract file of the governmental body administering the contract.
8 These determinations must be documented in sufficient detail to
9 satisfy the requirements of audit as provided in Section 11-35-1230.

10 (B) All findings, determinations, decisions, policies, and
11 procedures allowed by this Chapter are exempt from the
12 requirements of Section 1-23-140(b).”

13

14 SECTION 6. Section 11-35-310 of the 1976 Code is amended to
15 read:

16

17 “Section 11-35-310. Unless the context clearly indicates
18 otherwise:

19 (1) Information Technology (IT)’ means ~~data processing~~
20 ~~information resources, telecommunications, and office systems~~
21 ~~technologies and information services:~~

22 (a) ~~‘Data processing’ means the automated collection,~~
23 ~~storage, manipulation, and retrieval of data including: central~~
24 ~~processing units for micro, mini, and mainframe computers; related~~
25 ~~peripheral equipment such as terminals, document scanners, word~~
26 ~~processors, intelligent copiers, off line memory storage, printing~~
27 ~~systems, and data transmission equipment; and related software~~
28 ~~such as operating systems, library and maintenance routines, and~~
29 ~~applications programs~~ ‘Information resources’ means any
30 equipment including interconnected systems or subsystems of
31 equipment that is used in the automatic acquisition, creation,
32 conversion, duplication, storage, analysis, evaluation, manipulation,
33 management, movement, control, display, switching, interchange,
34 transmission, or reception of data or information by the using
35 agency.

36 (i) ‘Information resources’ includes, but is not limited to,
37 computers, ancillary equipment, including imaging peripherals,
38 input, output, and storage devices and devices necessary for security
39 and surveillance, peripheral equipment designed to be controlled by
40 the central processing unit of a computer, databases, software,
41 firmware, middleware, and application and application development
42 software; whether owned, leased, licensed, or accessed as a service;
43 and routine maintenance and support.

1 (ii) 'Database' means a collection of recorded information
2 in a form capable of, and for the purpose of, being stored in,
3 processed, and operated on by a computer.

4 (iii) 'Software' means computer programs that comprise a
5 series of instructions, rules, routines, or statements, regardless of the
6 media in which recorded, that allow or cause a computer to perform
7 a specific operation or series of operations.

8 (iv) For purposes of this definition, equipment is used by an
9 agency if the equipment is used by the agency directly or is used by
10 a contractor under a contract with the agency that requires its use.

11 (b) 'Telecommunications' means voice, data, message, and
12 video transmissions, and includes the transmission and switching
13 facilities of public telecommunications systems, as well as operating
14 and network software.

15 (c) ~~'Office systems technology' means office equipment such~~
16 ~~as typewriters, duplicating and photocopy machines, paper forms,~~
17 ~~and records; microfilm and microfiche equipment and printing~~
18 ~~equipment and services.~~

19 (d) ~~'Information Services' means the providing of consultant~~
20 ~~assistance for any aspect of information technology, systems, and~~
21 ~~networks services provided by a contractor associated with any~~
22 ~~aspect of information resources or telecommunications, except that~~
23 ~~information services does not include information resources or~~
24 ~~telecommunications.~~

25 (2) 'Board' means governing body of the State Fiscal
26 Accountability Authority.

27 (3) 'Business' means any corporation, partnership, individual,
28 sole proprietorship, joint stock company, joint venture, or any other
29 legal entity.

30 (4) 'Business day' means a day that is neither a Saturday,
31 Sunday, nor a state or federal holiday.

32 (5) 'Change order' means any written alteration in
33 specifications, delivery point, rate of delivery, period of
34 performance, price, quantity, or other provisions of any contract
35 accomplished by mutual agreement of the parties to the contract.

36 ~~(5)(6)~~ 'Chief procurement officer' means (a) the management
37 officer for information technology, (b) the state engineer for areas
38 of construction, architectural and engineering, construction
39 management, and land surveying services, and (c) the materials
40 management officer for all other procurements.

41 ~~(6)~~ 'Information Technology Management Officer' means the
42 person holding the position as the head of the Information
43 Technology Office of the State.

1 (7) 'Construction' means the process of building, altering,
2 repairing, remodeling, improving, or demolishing a public
3 infrastructure facility, including any public structure, public
4 building, or other public improvements of any kind to real property.
5 It does not include the routine operation, routine repair, or routine
6 maintenance of an existing public infrastructure facility, including
7 structures, buildings, or real property.

8 (8) 'Contract' means all types of state agreements, regardless of
9 what they may be called, for the procurement or disposal of supplies,
10 services, information technology, or construction.

11 (9) 'Contract modification' means a written order signed by the
12 procurement officer, directing the contractor to make changes which
13 the changes clause of the contract authorizes the procurement officer
14 to order without the consent of the contractor.

15 (10) 'Contractor' means any person having a contract with a
16 governmental body.

17 (11) 'Cost effectiveness' means the ability of a particular product
18 or service to efficiently provide goods or services to the State. In
19 determining the cost effectiveness of a particular product or service,
20 ~~the appropriate chief~~ procurement officer shall list the relevant
21 factors in the bid notice or solicitation and use only those listed
22 relevant factors in determining the award.

23 (12) 'Data' means recorded information, regardless of form or
24 characteristics.

25 (13) 'Days' means calendar days. In computing any period of
26 time prescribed or allowed by this code or the ensuing regulations,
27 or by any order of the Procurement Review Panel, the day of the act,
28 event, or default from which the designated period of time begins to
29 run is not to be included. ~~If the final day of the designated period~~
30 ~~falls on~~ The last day of the period computed is to be included, unless
31 it is a Saturday, Sunday, or a legal state or federal holiday, in which
32 event for the state or federal government, then the period shall run
33 runs to the end of the next ~~business~~ day which is neither a Saturday,
34 Sunday, nor such holiday.

35 (14) 'Debarment' means the disqualification of a person to
36 receive invitations for bids, or requests for proposals, or the award
37 of a contract by the State, for a specified period of time
38 commensurate with the seriousness of the offense or the failure or
39 inadequacy of performance.

40 (15) 'Designee' means a duly authorized representative of a
41 person with formal responsibilities under the code.

1 (16) 'Employee' means an individual drawing a salary from a
2 governmental body, whether elected or not, and any nonsalaried
3 individual performing personal services for any governmental body.

4 (17) (Reserved)

5 (18) 'Governmental body' means a state government department,
6 commission, council, board, bureau, committee, institution, college,
7 university, technical school, agency, government corporation, or
8 other establishment or official of the executive or judicial branch.
9 Governmental body excludes the General Assembly or its respective
10 branches or its committees, Legislative Council, the Legislative
11 Services Agency, and all local political subdivisions such as
12 counties, municipalities, school districts, or public service or special
13 purpose districts or any entity created by act of the General
14 Assembly for the purpose of erecting monuments or memorials or
15 commissioning art that is being procured exclusively by private
16 funds.

17 (19) 'Grant' means the furnishing by the State or the United
18 States government of assistance, whether financial or otherwise, to
19 a person to support a program authorized by law. It does not include
20 an award, the primary purpose of which is to procure specified end
21 products, whether in the form of supplies, services, information
22 technology, or construction. A contract resulting from such an
23 award must not be considered a grant but a procurement contract.

24 (20) 'Information Technology Management Officer' means the
25 person holding the position as the head of the State Information
26 Technology Office.

27 ~~(20)~~(21) 'Invitation for bids' means a written or published
28 solicitation issued by an authorized procurement officer for bids to
29 contract for the procurement or disposal of stated supplies, services,
30 information technology, or construction, which will ordinarily result
31 in the award of the contract to the responsible bidder making the
32 lowest responsive bid.

33 ~~(21)~~(22) 'Materials Management Officer' means the person
34 holding the position as the head of the materials management office
35 of the State.

36 ~~(22)~~(23) ~~Reserved~~ 'Person' means any business, individual,
37 union, committee, club, other organization, or group of individuals.

38 ~~(23)~~(24) 'Political subdivision' means all counties,
39 municipalities, school districts, public service or special purpose
40 districts.

41 ~~(24)~~(25) 'Procurement' means buying, purchasing, renting,
42 leasing, or otherwise acquiring any supplies, services, information
43 technology, or construction. It also includes all functions that pertain

1 to the obtaining of any supply, service, information technology, or
2 construction, including description of requirements, selection, and
3 solicitation of sources, preparation and award of contracts, and all
4 phases of contract administration.

5 ~~(25)~~(26) 'Procurement officer' means any person duly
6 authorized by the ~~governmental body, in accordance with~~
7 ~~procedures prescribed by regulation~~, appropriate chief procurement
8 officer or the head of the purchasing agency to enter into and
9 administer contracts and make written determinations and findings
10 with respect thereto. The term also includes an authorized
11 representative of the governmental body within the scope of his
12 authority.

13 (27) 'Public funds' means any money or property owned by the
14 State or a political subdivision thereof, regardless of form and
15 whether in specie or otherwise.

16 ~~(26)~~(28) 'Purchasing agency' means any governmental body
17 other than the chief procurement officers authorized by this code or
18 by way of delegation from the chief procurement officers to enter
19 into contracts.

20 ~~(27)~~(29) 'Real property' means any land, all things growing on
21 or attached thereto, and all improvements made thereto including
22 buildings and structures located thereon.

23 ~~(28)~~(30) 'Request for proposals' (RFP) means a written or
24 published solicitation issued by an authorized procurement officer
25 for proposals to provide supplies, services, information technology,
26 or construction which ordinarily result in the award of the contract
27 to the responsible ~~bidder~~ offeror making the proposal determined to
28 be most advantageous to the State. ~~The award of the contract must~~
29 ~~be made on the basis of evaluation factors that must be stated in the~~
30 ~~RFP.~~

31 ~~(29)~~(31) 'Services' means the furnishing of labor, time, or effort
32 by a contractor not required to deliver a specific end product, other
33 than reports which are merely incidental to required performance.
34 This term includes consultant services other than architectural,
35 engineering, land surveying, construction management, and related
36 services. This term does not include employment agreements or
37 information services as defined in Section ~~11-35-310(1)(d)~~
38 ~~11-35-310(1)(c).~~

39 ~~(30)~~(32) 'Subcontractor' means any person having a contract to
40 perform work or render service to a prime contractor as a part of the
41 prime contractor's agreement with a governmental body.

42 ~~(31)~~(33) 'Supplies' means all personal property including, but
43 not limited to, equipment, materials, printing, and insurance.

1 ~~(32)~~(34) 'State' means state government.

2 ~~(33)~~(35) 'State Engineer' means the person holding the position
3 as head of the state engineer's office.

4 ~~(34)~~(36) 'Suspension' means the disqualification of a person to
5 receive invitations for bids, requests for proposals, or the award of
6 a contract by the State, for a temporary period pending the
7 completion of an investigation and any legal proceedings that may
8 ensue because a person is suspected upon probable cause of
9 engaging in criminal, fraudulent, or seriously improper conduct or
10 failure or inadequacy of performance which may lead to debarment.

11 ~~(35)~~(37) 'Term contract' means contracts established by the
12 chief procurement officer for specific supplies, services, or
13 information technology for a specified time and for which it is
14 mandatory that all governmental bodies procure their requirements
15 during its term. As provided in the solicitation, if a ~~public~~
16 ~~procurement unit~~ governmental body is offered the same supplies,
17 services, or information technology at a price that is at least ten
18 percent less than the term contract price, it may purchase from the
19 vendor offering the lower price after first offering the vendor
20 holding the term contract the option to meet the lower price. The
21 solicitation used to establish the term contract must specify contract
22 terms applicable to a purchase from the vendor offering the lower
23 price. If the vendor holding the term contract meets the lower price,
24 then the governmental body shall purchase from the contract
25 vendor. All decisions to purchase from the vendor offering the lower
26 price must be documented by the procurement officer in sufficient
27 detail to satisfy the requirements of an external audit. A term
28 contract may be a ~~multi-term~~ multiterm contract as provided in
29 Section 11-35-2030.

30 ~~(36)~~(38) 'Using agency' means any governmental body of the
31 State which utilizes any supplies, services, information technology,
32 or construction purchased under this code.

33 ~~(37) 'Designated board office' and 'designated board officer'~~
34 ~~means the office or officer designated in accordance with Section~~
35 ~~11-35-540(5)."~~

36
37 SECTION 7. Section 11-35-410 of the 1976 Code is amended to
38 read:

39 "Section 11-35-410. (A) Procurement information must be a
40 public record to the extent required by Chapter 4, Title 30 (The
41 Freedom of Information Act), except as otherwise provided by this
42 code, and with the exception that commercial or financial
43 information obtained in response to a request for proposals or any

1 type of bid solicitation that is privileged and confidential need not
2 be disclosed.

3 (B) Privileged and confidential information is information in
4 specific detail not customarily released to the general public, the
5 release of which might cause harm to the competitive position of the
6 party supplying the information. Examples of this type of
7 information include:

8 (1) customer lists;

9 (2) design recommendations and identification of prospective
10 problem areas under an RFP;

11 (3) design concepts, including methods and procedures;

12 (4) biographical data on key employees of the bidder.

13 (C) ~~For all~~ The board shall promulgate regulations directing the
14 public availability and disposition of documents submitted in
15 response or with regard to a solicitation or other request, the
16 documents need not be disclosed if an award is not made where no
17 award is made.

18 (D) ~~Evaluative documents predecisional in nature such as~~
19 ~~inter agency or intra agency memoranda containing technical~~
20 ~~evaluations and recommendations are exempted so long as the~~
21 ~~contract award does not expressly adopt or incorporate the~~
22 ~~inter agency or intra agency memoranda reflecting the~~
23 ~~predecisional deliberations.~~

24 (E) ~~For all~~ documents submitted in response or with regard to
25 any solicitation or other request, the person submitting the
26 documents shall comply with instructions provided in the
27 solicitation for marking information exempt from public disclosure.
28 Information not marked as required by the applicable instructions
29 may be disclosed to the public.

30 (E) A governmental body, with the approval of the appropriate
31 chief procurement officer, may keep portions of a solicitation
32 confidential and release the information to prospective offerors only
33 upon execution of a nondisclosure agreement, provided the
34 information is otherwise exempted from disclosure by law.

35 (F) If requested in writing before a final award by an actual
36 bidder, offeror, contractor, or subcontractor with regard to a specific
37 intended award or award of a contract, the procurement officer shall,
38 within five days of the receipt of any such request, make documents
39 directly connected to the procurement activity and not otherwise
40 exempt from disclosure available for inspection at an office of the
41 responsible procurement officer. Without otherwise limiting any
42 other exemptions granted by law, and except as provided herein,
43 documents of and documents incidental to proposed contractual

1 arrangements, including those used for contract negotiations, are not
2 exempt from disclosure after the date notice of intent to award is
3 posted, unless the notice is subsequently canceled.”
4

5 SECTION 8. Section 11-35-510 of the 1976 Code is amended to
6 read:

7
8 “Section 11-35-510. All rights, powers, duties, and authority
9 relating to the procurement of supplies, services, and information
10 technology and to the management, control, warehousing, sale and
11 disposal of supplies, construction, information technology, and
12 services now vested in or exercised by a state governmental body
13 pursuant to the provisions of law relating thereto, and regardless of
14 source of funding, are hereby vested in the appropriate chief
15 procurement officer, or with regard to Article 15, as provided
16 therein. This vesting of authority is subject to ~~Sections~~ Section
17 11-35-710 (Exemptions), Section 11-35-1250 (Authority to
18 Contract for Auditing Services), Section 11-35-1260 (Authority to
19 Contract for Legal Services), Section 11-35-1550 (Small
20 Purchases), Section 11-35-1560 (Sole Source Procurement), Section
21 11-35-1570 (Emergency Procurements), Section 11-35-3230
22 (Exception for Small Architect-Engineer, and Land Surveying
23 Services Contracts), and Section 11-35-3620 (Management of
24 Warehouses and Inventory).”
25

26 SECTION 9. Section 11-35-530 of the 1976 Code is amended to
27 read:

28
29 “Section 11-35-530. The following advisory committees may be
30 established by the board for the purpose of advising the ~~policy~~
31 committee board:

32 (a) The board may appoint a purchasing policies and
33 procedures advisory committee comprised of state and local
34 government, and public members ~~in accordance with regulations of~~
35 ~~the board~~ to discuss the performance of public purchasing in the
36 State and to consider specific methods for improvement.

37 (b) The board may appoint an information technology and
38 procedures advisory committee comprised of state and local
39 government and public members ~~in accordance with regulations of~~
40 ~~the board~~ to discuss the purchasing performance of information
41 technology for government in the State and to consider specific
42 methods for improvement.

1 (c) The board ~~shall~~ may appoint a construction,
2 architect-engineer, construction management, and land surveying
3 services advisory committee comprised of state and local
4 government and public members ~~in accordance with regulations of~~
5 ~~the board~~ to discuss the purchasing performance of these services in
6 the State and to consider specific methods of improvement. The
7 advisory committee shall be comprised of the following: the State
8 Engineer, a state agency representative, a banker, an attorney, a
9 representative of local government, a registered architect, a
10 registered engineer, a licensed building contractor, and a licensed
11 subcontractor.”

12

13 SECTION 10. Section 11-35-540(5) of the 1976 Code is amended
14 to read:

15

16 ~~“(5) For every reference in this code to a ‘designated board~~
17 ~~office’, the chief executive officer of the board shall designate the~~
18 ~~office or other subdivision of the board that is responsible for the~~
19 ~~referenced statutory role. For every reference in this code to a~~
20 ~~‘designated board officer’, the chief executive officer of the board~~
21 ~~shall designate the board officer or other board position that is~~
22 ~~responsible for the referenced statutory role. More than one office~~
23 ~~or officer may be designated for any referenced statutory role. All~~
24 ~~designations pursuant to this subparagraph must be submitted in~~
25 ~~writing to the chief procurement officers.”~~

26

27 SECTION 11 Section 11-35-710 of the 1976 Code is amended to
28 read:

29

30 “Section 11-35-710. (A) The board, upon the recommendation
31 of the ~~designated board office~~ chief procurement officer, may
32 exempt governmental bodies from purchasing certain items through
33 the respective chief procurement officer’s area of responsibility. The
34 board may exempt specific supplies, services, information
35 technology, or construction from the purchasing procedures
36 required in this chapter and for just cause by unanimous written
37 decision limit or may withdraw exemptions provided for in this
38 section. The following exemptions are granted from this chapter:

39 (1) the construction, maintenance, and repair of bridges,
40 highways, and roads; vehicle and road equipment maintenance and
41 repair; and other emergency-type parts or equipment utilized by the
42 Department of Transportation or the Department of Public Safety;

1 (2) the purchase of raw materials by the South Carolina
2 Department of Corrections, Division of Prison Industries;
3 (3) South Carolina State Ports Authority;
4 (4) Division of Public Railways of the Department of
5 Commerce;
6 (5) South Carolina Public Service Authority;
7 (6) expenditure of funds at state institutions of higher learning
8 derived wholly from athletic or other student contests, from the
9 activities of student organizations, and from the operation of
10 canteens and bookstores, except as the funds are used for the
11 procurement of construction, architect-engineer,
12 construction-management, and land surveying services;
13 (7) livestock, feed, and veterinary supplies;
14 (8) articles for commercial sale by all governmental bodies;
15 (9) fresh fruits, vegetables, meats, fish, milk, and eggs;
16 (10) South Carolina Arts Commission and South Carolina
17 Museum Commission for the purchase of one-of-a-kind items such
18 as paintings, antiques, sculpture, and similar objects. Before a
19 governmental body procures the objects, the head of the purchasing
20 agency shall prepare a written determination specifying the need for
21 the objects and the benefits to the State. The South Carolina Arts
22 Commission shall review the determination and forward a
23 recommendation to the board for approval;
24 (11) published books, periodicals, and technical pamphlets;
25 (12) South Carolina Research Authority;
26 (13) the purchase of supplies, services, or information
27 technology by state offices, departments, institutions, agencies,
28 boards, and commissions or the political subdivisions of this State
29 from the South Carolina Department of Corrections, Division of
30 Prison Industries;
31 (14) Medical University Hospital Authority, if the Medical
32 University Hospital Authority has promulgated a procurement
33 process in accordance with its enabling provision;
34 (15) if approved in writing by the State Engineer in advance,
35 and if some aspect of the overall transaction is otherwise approved
36 by the board in advance of the acquisition, an acquisition of
37 construction from an eleemosynary corporation or foundation, or a
38 wholly owned business thereof, established solely for the
39 governmental body's benefit, but only if the eleemosynary
40 corporation or foundation acquires the construction on behalf of or
41 for the use of the governmental body and does so pursuant to this
42 code, as required by Section 11-35-40(4).

1 (B) The State Fiscal Accountability Authority shall maintain and
2 post publicly a running list of all currently effective actions taken by
3 the board pursuant to subsection (A)."

4
5 SECTION 12. Section 11-35-810 of the 1976 Code is amended to
6 read:

7
8 "Section 11-35-810. There is hereby created, within the ~~Office~~
9 ~~of General~~ Division of Procurement Services, a Materials
10 Management Office to be headed by the Materials Management
11 Officer."

12
13 SECTION 13. Section 11-35-820 of the 1976 Code is amended to
14 read:

15
16 "Section 11-35-820. There is created within the ~~board~~ Division
17 of Procurement Services, the Information Technology Management
18 Office to be headed by the Information Technology Management
19 Officer. The office is responsible for administering all procurement
20 and contracting activities undertaken for governmental bodies
21 involving information technology in accordance with this chapter,
22 and may establish a training and certification program in accordance
23 with Section 11-35-1030. All procurements involving information
24 technology, and any pre-procurement and post-procurement
25 activities in this area, must be conducted in accordance with the
26 regulations promulgated by the board, ~~except as otherwise provided~~
27 ~~in this code by specific reference to the Information Technology~~
28 ~~Management Office."~~

29
30 SECTION 14. Section 11-35-1210(1), (2), and (4) is amended to
31 read:

32
33 "(1) Authority. In an amount up to fifty thousand dollars in actual
34 or potential value, individual governmental bodies may make direct
35 procurements not under term contracts. Subject to the following and
36 subject to any ensuing regulations:

37 (a) the board may assign differential dollar limits below
38 which individual governmental bodies may make direct
39 procurements not under term contracts. The ~~designated board office~~
40 Division of Procurement Services shall review the respective
41 governmental body's internal procurement operation, shall certify
42 in writing that it is consistent with the provisions of this code and
43 the ensuing regulations, and recommend to the board those dollar

1 limits for the respective governmental body's procurement not
2 under term contract; and

3 (b) the Director of the Division of Procurement Services may
4 authorize an individual governmental body to make direct
5 procurements not under term contracts in an amount up to one
6 hundred fifty thousand dollars. All authority granted pursuant to this
7 item must be in writing, and the director shall advise the board in
8 writing of all such authorizations.

9 (2) Policy. Authorizations granted by the board or the Director
10 of the Division of Procurement Services to a governmental body are
11 subject to the following:

12 (a) adherence to the provisions of this code and the ensuing
13 regulations, particularly concerning competitive procurement
14 methods;

15 (b) responsiveness to user needs;

16 (c) obtaining the best prices for value received.

17
18 (4) Subject to subsection (1), the State Board for Technical and
19 Comprehensive Education, in coordination with the appropriate
20 Chief Procurement Officer, may approve a cumulative total of up to
21 fifty thousand dollars in additional procurement authority for
22 technical colleges, provided that the ~~designated board office~~
23 Division of Procurement Services makes no material audit findings
24 concerning procurement. As provided by regulation, any authority
25 granted pursuant to this paragraph is effective when certified in
26 writing by the ~~designated board office~~ Division of Procurement
27 Services."

28
29 SECTION 15. Section 11-35-1230 of the 1976 Code is amended
30 to read:

31
32 "Section 11-35-1230. (1) The ~~designated board office~~ Division
33 of Procurement Services, through consultation with the chief
34 procurement officers, shall develop written plans for the auditing of
35 state procurements.

36 (2) In procurement audits of governmental bodies thereafter, the
37 auditors from the ~~designated board office~~ Division of Procurement
38 Services shall review the adequacy of the ~~system's~~ governmental
39 body's internal controls in order to ensure compliance with the
40 requirement of this code and the ensuing regulations. A
41 noncompliance discovered through audit must be transmitted in
42 management letters to the audited governmental body and the ~~State~~
43 ~~Fiscal Accountability Authority~~ board. The auditors Division of

1 Procurement Services shall provide in writing proposed corrective
2 action to governmental bodies. Based upon audit recommendations
3 ~~of the designated board office~~, the board may revoke certification as
4 provided in Section 11-35-1210 and require the governmental body
5 to make all procurements through the appropriate chief procurement
6 officer above a dollar limit set by the board, until such time as the
7 board is assured of compliance with this code and its regulations by
8 that governmental body.

9 ~~(2) The Division of Budget Analysis, or other office or division~~
10 ~~within the State Fiscal Accountability Authority, in consultation~~
11 ~~with the Comptroller General, shall assume responsibility for~~
12 ~~operation and maintenance of the automated quarterly fiscal~~
13 ~~reporting procedures. The Comptroller General and the Division of~~
14 ~~Budget Analysis, or other office or division within the State Fiscal~~
15 ~~Accountability Authority, shall assume responsibility for providing~~
16 ~~quarterly reports to the General Assembly regarding the status of~~
17 ~~personnel positions, budgets, transfers, and expenditures in all state~~
18 ~~agencies, departments, and institutions in a format developed in~~
19 ~~consultation with the Legislative Audit Council. The Legislative~~
20 ~~Audit Council shall periodically review the reporting system and~~
21 ~~coordinate legislative information needs with the Office of the~~
22 ~~Comptroller General and the Division of Budget Analysis, or other~~
23 ~~office or division within the State Fiscal Accountability Authority,~~
24 ~~as necessary. All agencies, departments and institutions of state~~
25 ~~government shall report to the Comptroller General and the Division~~
26 ~~of Budget Analysis, or other office or division within the State~~
27 ~~Fiscal Accountability Authority, any required information. The~~
28 ~~Legislative Audit Council shall undertake a periodic review of the~~
29 ~~reporting and data analysis system developed by the division for~~
30 ~~reporting both commodities purchased and those not purchased~~
31 ~~through the division's central purchasing system, and shall make~~
32 ~~recommendations for incorporating these reporting procedures into~~
33 ~~the Statewide Accounting and Reporting System (STARS) as~~
34 ~~necessary to reduce unnecessary duplication and improve~~
35 ~~efficiency, effectiveness, and accountability."~~

36

37 SECTION 16. Section 11-35-1410 of the 1976 Code is amended
38 to read:

39 "Section 11-35-1410. Unless the context clearly indicates
40 otherwise:

41 (1) 'Commercial product' means supplies, other than printing,
42 or information resources:

1 (a) that is of a type customarily used by the general public and
2 that has been sold, leased, or licensed to the general public;

3 (b) that would satisfy the criteria in subitem (a) were it not for
4 modifications of a type customarily available in the commercial
5 marketplace, or minor modifications made to meet State
6 requirements; or

7 (c) that is a combination of products meeting the
8 requirements of subitem (a) or (b) that are of a type customarily
9 combined and sold in combination to the general public.

10 (2) ‘Commercially available off-the-shelf product’ means
11 supplies, other than printing, or information resources: that is a
12 commercial product, as defined herein, that is sold in substantial
13 quantities in the commercial marketplace; and is offered to the State,
14 without modification, in the same form in which it is sold in the
15 commercial marketplace. It does not include agricultural products,
16 petroleum products, and other items customarily sold in bulk.

17 ~~(1)~~(3) ‘Cost-reimbursement contract’ means a contract under
18 which a contractor is reimbursed for costs which are allowable and
19 allocable in accordance with the ~~cost principles as provided in~~
20 Article 13 of this chapter contract terms and the provisions of this
21 code, and paid a fee, if any.

22 ~~(2)~~(4) ‘Established catalog price’ means the price included in a
23 catalog, price list, schedule, or other form that:

24 (a) is regularly maintained by a manufacturer or vendor of an
25 item;

26 (b) is either published or otherwise available for inspection by
27 customers;

28 (c) states prices at which sales are currently or were last made
29 to a significant number of buyers constituting the general buying
30 public for the supplies, services, or information technology
31 involved.

32 ~~(3)~~(5) ‘Invitation for bids’ means all documents, whether
33 attached or incorporated by reference, utilized for soliciting bids in
34 accordance with the procedures set forth in Section 11-35-1520.

35 ~~(4)~~(6) ‘Purchase description’ means specifications or other
36 document describing the supplies, services, information technology,
37 or construction to be procured.

38 ~~(5)~~(7) ‘Request for proposals’ means all documents, whether
39 attached or incorporated by reference, utilized for soliciting
40 proposals.

41 ~~(6)~~(8) ‘Responsible bidder or offeror’ means a person who has
42 the capability in all respects to perform fully the contract

1 requirements and the integrity and reliability which will assure good
2 faith performance which may be substantiated by past performance.
3 ~~(7)~~(9) 'Responsive bidder or offeror' means a person who has
4 submitted a bid or ~~offer~~ proposal which conforms in all material
5 aspects to the invitation for bids or request for proposals.”

6
7 SECTION 17. Section 11-35-1510 of the 1976 Code is amended
8 to read:

9
10 “Section 11-35-1510. Unless otherwise provided by law, all state
11 contracts must be awarded by competitive sealed bidding, pursuant
12 to Section 11-35-1520, except as provided in:

13 (1) Section 11-35-1250 (Authority to Contract for Auditing
14 Services);

15 (2) Section 11-35-1260 (Authority to Contract for Legal
16 Services);

17 (3) Section 11-35-1525 (Fixed Priced Bidding);

18 (4) Section 11-35-1528 (Competitive Best Value Bidding);

19 (5) Section 11-35-1529 (Competitive Online Bidding);

20 (6) Section 11-35-1530 (Competitive Sealed Proposals);

21 (7) Section 11-35-1535 (Competitive Negotiations);

22 (8) Section 11-35-1540 (Negotiations After Unsuccessful
23 Competitive Sealed Bidding);

24 ~~(8)~~(9) Section 11-35-1550 (Small Purchases);

25 ~~(9)~~(10) Section 11-35-1560 (Sole Source Procurements);

26 ~~(10)~~(11) Section 11-35-1570 (Emergency Procurements);

27 ~~(11)~~(12) Section 11-35-1575 (Participation in Auction or
28 Bankruptcy Sale);

29 ~~(12)~~(13) (Reserved)

30 ~~(13)~~(14) Section 11-35-3015 (Source Selection Methods
31 Assigned to Project Delivery Methods);

32 ~~(14)~~(15) Section 11-35-3220 (Architect Engineer, Construction
33 Management and Land Surveying Services Procurement
34 Procedures); and

35 ~~(15)~~(16) Section 11-35-3230 (Exception for Small
36 Architect-Engineer and Land Surveying Services contracts).”

37
38 SECTION 18. Section 11-35-1520(1), (3), (7), (8), and (10) of the
39 1976 Code is amended to read:

40
41 “(1) Condition for Use. Contracts ~~greater than fifty thousand~~
42 ~~dollars~~ must be awarded by competitive sealed bidding except as
43 otherwise provided in Section 11-35-1510.

1 (3) Notice. Adequate notice of the invitation for bids must be
2 given at a reasonable time before the date set forth in it for the
3 opening of bids. The notice must include publications in "South
4 Carolina Business Opportunities" ~~or a means of central electronic~~
5 ~~advertising as approved by the designated board office.~~
6 Governmental bodies may charge vendors the cost incurred for
7 copying and mailing bid or proposal documents requested in
8 response to a procurement.

9 (7) Correction or Withdrawal of Bids; Cancellation of Awards.
10 Correction or withdrawal of inadvertently erroneous bids before ~~bid~~
11 ~~opening, withdrawal of inadvertently erroneous bids~~ or after award,
12 or cancellation and re-award of awards or contracts, after award but
13 before performance, may be permitted in accordance with
14 regulations promulgated by the board. After bid opening, changes
15 in bid prices or other provisions of bids prejudicial to the interest of
16 the State or fair competition must not be permitted. After opening,
17 bids must not be corrected or withdrawn except in accordance with
18 the provisions of this code and the regulations promulgated pursuant
19 to it. Except as otherwise provided by regulation, all decisions to
20 permit the correction or withdrawal of bids, or to cancel awards or
21 contracts, after award but before performance, must be supported by
22 a written determination of appropriateness made by the chief
23 procurement officers or head of a purchasing agency.

24 (8) ~~Discussion with Bidders. As provided in the invitation for~~
25 ~~bids, discussions may be conducted with apparent responsive~~
26 ~~bidders for the purpose of clarification to assure full understanding~~
27 ~~of the requirements of the invitation for bids. All bids, in the~~
28 ~~procuring agency's sole judgment, needing clarification must be~~
29 ~~accorded that opportunity. Clarification of a bidder's bid must be~~
30 ~~documented in writing by the procurement officer and must be~~
31 ~~included with the bid. Documentation concerning the clarification~~
32 ~~must be subject to disclosure upon request as required by Section~~
33 ~~11-35-410 Reserved.~~

34 (10) Award. Unless there is a compelling reason to reject bids as
35 prescribed by regulation of the board, notice of an award or an
36 intended award of a contract to the lowest responsive and
37 responsible bidders whose bid meets the requirements set forth in
38 the invitation for bids must be given by posting the notice on the
39 date and at a location specified in the invitation for bids. ~~For~~
40 ~~contracts with a total or potential value in excess of fifty thousand~~
41 ~~dollars but less than one hundred thousand dollars, notice of the~~
42 ~~award of a contract must be given by posting and must be sent to all~~
43 ~~bidders responding to the solicitation on the same day that the notice~~

1 ~~is posted in accordance with this section.~~ For contracts with a total
2 or potential value in excess of one hundred thousand dollars ~~or~~
3 ~~greater~~, notice of an intended award of a contract must be given by
4 posting the notice for ~~ten~~ seven business days before entering into a
5 contract and must be sent electronically to all bidders responding to
6 the solicitation on the same day that the notice is posted in
7 accordance with this section. The posting date shall appear on the
8 face of all these notices. ~~Before the posting of the award, the~~
9 ~~procuring agency may negotiate with the lowest responsive and~~
10 ~~responsible bidder to lower his bid within the scope of the invitation~~
11 ~~for bids~~ If a change to the posting date is necessary, notice of the
12 revised posting date must be given by posting the notice for three
13 business days at the location identified in the solicitation and must
14 be sent electronically to all bidders responding to the solicitation on
15 the same day that the notice is posted in accordance with this
16 section. The invitation for bids and a notice of award or notice of
17 intent to award must contain a statement of a bidder's right to protest
18 pursuant to Section 11-35-4210(1). When only one response is
19 received, the notice of intent to award and the delay of award may
20 be waived.”

21
22 SECTION 19.A. Section 11-35-1525(1), (6), (8), and (9) of the
23 1976 Code is amended to read:

24
25 “(1) Conditions for Use. When ~~a purchasing agency~~ the
26 procurement officer determines in writing that the use of
27 competitive sealed bidding is either not practicable or not
28 advantageous to the State, a contract may be entered into by
29 competitive fixed price bidding subject to the provisions of Section
30 11-35-1520 and the ensuing regulations, unless otherwise provided
31 for in this section.

32
33 ~~(6) Discussion with Responsive Bidders. Discussions may be~~
34 ~~conducted with apparent responsive bidders to assure understanding~~
35 ~~of the requirements of the fixed price bid. All bidders whose bids,~~
36 ~~in the procuring agency's sole judgment, need clarification shall be~~
37 ~~accorded such an opportunity~~ Reserved.

38 (8) Bids Received After Award. As provided in the solicitation,
39 bidders not responding to the initial fixed price bid may be added to
40 the awarded vendors' list provided the bidder furnishes evidence of
41 responsibility and responsiveness to the state's original fixed price
42 bid as ~~authorized~~ required by the solicitation.

1 ~~(9) Remedies. The failure of a specific offeror to receive business,~~
2 ~~once it has been added to the awarded vendors' list, shall not be~~
3 ~~grounds for a contract controversy under Section 11-35-4230."~~

4
5 B. The deletion of 11-35-1525(9) may not be interpreted as an
6 indication that the failure of a specific offeror to receive business is
7 grounds for a dispute.

8
9 SECTION 20. Section 11-35-1528 (1), (4), (5), (6), and (7) of the
10 1976 Code is amended to read:

11
12 "(1) Conditions for Use. When ~~a purchasing agency~~ the
13 procurement officer determines in writing that the use of
14 competitive sealed bidding is either not practicable or not
15 advantageous to the State, a contract may be entered into by
16 competitive best value bidding subject to the provisions of Section
17 11-35-1520 and the ensuing regulations, unless otherwise provided
18 for in this section.

19
20 (4) Bid Opening. At bid opening, the only information that will
21 be released is the names of the participating bidders. ~~Cost Price~~ Price
22 information will be provided after the ranking of bidders and the
23 issuance of award.

24 (5) Evaluation Factors. The best value bid must state the factors
25 to be used in determination of award and the numerical weighting
26 for each factor. ~~Cost Price~~ Price must be a factor in determination of
27 award and cannot be weighted at less than sixty percent. Best value
28 bid evaluation factors may include, but are not limited to, any of the
29 following ~~as determined by the procurement officer in its sole~~
30 ~~discretion and not subject to protest:~~

- 31 (a) operational costs the State would incur if the bid is
32 accepted;
- 33 (b) quality of the product or service or its technical
34 competency;
- 35 (c) reliability of delivery and implementation schedules;
- 36 (d) maximum facilitation of data exchange and systems
37 integration;
- 38 (e) warranties, guarantees, and return policy;
- 39 (f) vendor financial stability;
- 40 (g) consistency of the proposed solution with the state's
41 planning documents and announced strategic program direction;
- 42 (h) quality and effectiveness of business solution and
43 approach;

- 1 (i) industry and program experience;
- 2 (j) prior record of vendor performance;
- 3 (k) vendor expertise with engagement of similar scope and
- 4 complexity;
- 5 (l) extent and quality of the proposed participation and
- 6 acceptance by all user groups;
- 7 (m) proven development methodologies and tools; and
- 8 (n) innovative use of current technologies and quality results.

9 ~~(6) Discussion with Responsive Bidders. Discussions may be~~
10 ~~conducted with apparent responsive bidders to assure understanding~~
11 ~~of the best value bid. All bidders whose bids, in the procuring~~
12 ~~agency's sole judgment, need clarification shall be accorded such an~~
13 ~~opportunity~~ Clarification of Responsive Bid. The procurement
14 officer may ask a responsive bidder to clarify an ambiguity in its
15 bid; however, no material modification of the bid is allowed.

16 (7) Selection and Ranking. Bids shall be evaluated by using only
17 the criteria and weightings stated in the invitation for best value bid
18 bids and by adhering to the weighting as assigned. All evaluation
19 factors, other than ~~cost~~ price, will be considered independent of and
20 prior to determining the effect of cost price on the score for each
21 participating bidder. Once the evaluation is complete, all responsive
22 bidders shall must be ranked from most advantageous to least
23 advantageous to the State, considering only the evaluation factors
24 stated in the invitation for best value bid bids."

25
26 SECTION 21. Section 11-35-1529 of the 1976 Code is amended
27 to read:

28
29 "Section 11-35-1529. (1) Conditions for Use. When a
30 ~~purchasing agency~~ the procurement officer determines in writing
31 that on-line bidding is more advantageous than ~~other procurement~~
32 ~~methods provided by this code~~ competitive sealed bidding, a
33 contract may be entered into by competitive on-line bidding, subject
34 to the provisions of Section 11-35-1520 and the ensuing regulations,
35 unless otherwise provided in this section.

36 (2) Public Notice. Adequate public notice of the request for the
37 solicitation must be given in the same manner as provided in Section
38 11-35-1520(3).

39 (3) Bidding Process. The solicitation must designate both an
40 Opening Date and Time and a Closing Date and Time. The Closing
41 Date and Time need not be a fixed point in time, but may remain
42 ~~dependent~~ dependent on a variable specified in the solicitation. At
43 the Opening Date and Time, the State must begin accepting

1 real-time electronic bids. The solicitation must remain open until the
2 Closing Date and Time. ~~The State may require bidders to register~~
3 Before the Opening Date and Time the State shall require bidders to
4 register, shall register only responsible bidders, and, as a part of that
5 registration, require bidders to agree to any terms, conditions, or
6 other requirements of the solicitation. If less than two bidders are
7 registered, the solicitation must be canceled. Following receipt of
8 the first bid after the Opening Date and Time, the lowest bid price
9 must be posted electronically to the Internet and updated on a
10 real- time basis. At any time before the Closing Date and Time, a
11 bidder may lower the price of its bid, except that after Opening Date
12 and Time, a bidder may not lower its price unless that price is below
13 the then lowest bid. Bid prices may not be increased after Opening
14 Date and Time. Except for bid prices, bids may be modified only as
15 otherwise allowed by this code. A bid may be withdrawn only in
16 compliance with Section 11-35-1520. If a bid is withdrawn, a later
17 bid submitted by the same bidder may not be for a higher price. If
18 the lowest responsive bid is withdrawn after the Closing Date and
19 Time, the State may cancel the solicitation in accordance with this
20 code or reopen electronic bidding to all pre-existing bidders by
21 giving adequate notice to all pre-existing bidders of both the new
22 Opening Date and Time and the new Closing Date and Time. Notice
23 that electronic bidding will be reopened must be given as specified
24 in the solicitation.

25 ~~(3)~~(4) Receipt and Safeguarding of Bids. Other than price, any
26 information provided to the State by a bidder must be safeguarded
27 as required by Section 11-35-1520(4).

28 ~~(4)~~(5) Provisions Not to Apply. Section 11-35-1524 and
29 paragraph (5) (Bid Opening) of Section 11-35-1520 do not apply to
30 solicitations issued pursuant to this section.”

31
32 SECTION 22. Section 11-35-1530 of the 1976 Code is amended
33 to read:

34
35 “Section 11-35-1530. (1) Conditions for Use.

36 (a) ~~If a purchasing agency~~ the procurement officer determines
37 in writing that the use of competitive sealed bidding is either not
38 practicable or not advantageous to the State, a contract may be
39 entered into by competitive sealed proposals subject to the
40 provisions of Section 11-35-1520 and the ensuing regulations,
41 unless otherwise provided in this section.

42 (b) The board may provide by regulation that it is either not
43 practicable or not advantageous to the State to procure specified

1 types of supplies, services, information technology, or construction
2 by competitive sealed bidding. ~~Contracts for the design build,~~
3 ~~design build operate maintain, _____ or~~
4 ~~design build finance operate maintain project delivery methods~~
5 ~~specified in Article 9 of this code must be entered into by~~
6 ~~competitive sealed proposals, except as otherwise provided in~~
7 ~~Sections 11-35-1550 (Small purchases), 11-35-1560 (Sole source~~
8 ~~procurements), and 11-35-1570 (Emergency procurements).~~

9 (2) Public Notice. Adequate public notice of the request for
10 proposals must be given in the same manner as provided in Section
11 11-35-1520(3).

12 (3) Receipt of Proposals. Proposals must be opened publicly in
13 accordance with regulations of the board. A tabulation of proposals
14 must be prepared in accordance with regulations promulgated by the
15 board and must be open for public inspection after contract award.

16 (4) Request for Qualifications.

17 (a) Before soliciting proposals, the procurement officer may
18 issue a request for qualifications from prospective offerors. The
19 request must contain at a minimum a description of the scope of the
20 work to be solicited by the request for proposals and must state the
21 deadline for submission of information and how prospective
22 offerors may apply for consideration. The request must require
23 information only on their qualifications, experience, and ability to
24 perform the requirements of the contract.

25 (b) After receipt of the responses to the request for
26 qualifications from prospective offerors, rank of the prospective
27 offerors must be determined in writing from most qualified to least
28 qualified on the basis of the information provided. Proposals then
29 must be solicited from at least the top two prospective offerors by
30 means of a request for proposals. The determination regarding how
31 many proposals to solicit is not subject to review pursuant to Article
32 17.

33 (5) Evaluation Factors. The request for proposals must state the
34 relative importance of the factors to be considered in evaluating
35 proposals but may not require a numerical weighting for each factor.
36 Price may, but need not, be an evaluation factor.

37 (6) Discussion with Offerors. As provided in the request for
38 proposals, ~~and under regulations,~~ discussions may be conducted
39 with offerors who submit proposals determined to be reasonably
40 susceptible of being selected for award for the purpose of
41 clarification to assure full understanding of, and responsiveness to,
42 the solicitation requirements. ~~All offerors whose proposals, in the~~
43 ~~procurement officer's sole judgment, need clarification must be~~

1 ~~accorded that opportunity~~ Offerors must be accorded fair and equal
2 treatment with respect to any opportunity for discussions. In
3 conducting discussions, there must be no disclosure of confidential
4 information derived from proposals submitted by competing
5 offerors. The board shall promulgate regulations governing
6 discussions.

7 (7) Selection and Ranking. Proposals must be evaluated using
8 only the criteria stated in the request for proposals and there must be
9 adherence to weightings that have been assigned previously. Once
10 evaluation is complete, all responsive offerors must be ranked from
11 most advantageous to least advantageous to the State, considering
12 only the evaluation factors stated in the request for proposals. ~~If~~
13 ~~price is an initial evaluation factor, award must be made in~~
14 ~~accordance with Section 11-35-1530(9) below.~~

15 (8) Negotiations. ~~Whether price was an evaluation factor or not,~~
16 After proposals have been ranked pursuant to Section
17 11-35-1530(7), the procurement officer, in his sole discretion and
18 not subject to review under Article 17, may proceed in any of the
19 manners indicated below, except that in no case may confidential
20 information derived from proposals and negotiations submitted by
21 competing offerors be disclosed:

22 (a) negotiate with the highest ranking offeror on price, on
23 matters affecting the scope of the contract, so long as the changes
24 are within the general scope of the request for proposals, or on both.
25 If a satisfactory contract cannot be negotiated with the highest
26 ranking offeror, negotiations may be conducted, in the sole
27 discretion of the procurement officer, with the second, and then the
28 third, and so on, ranked offerors to the level of ranking determined
29 by the procurement officer in his sole discretion;

30 (b) during the negotiation process as outlined in item (a)
31 above, if the procurement officer is unsuccessful in his first round
32 of negotiations, he may reopen negotiations with any offeror with
33 whom he previously negotiated; or

34 (c) before or after negotiations pursuant to Section
35 11-35-1530(8), the procurement officer may make changes to the
36 request for proposals within the general scope of the request for
37 proposals and may provide all responsive offerors an opportunity to
38 submit their best and final offers, which must be reevaluated and
39 ranked pursuant to Section 11-35-1530(7).

40 (9) Award. Award must be made to the responsible offeror
41 whose proposal is determined in writing to be the most
42 advantageous to the State, taking into consideration ~~price and~~ the
43 evaluation factors set forth in the request for proposals, unless the

1 procurement officer determines to utilize one of the options
2 provided in Section 11-35-1530(8). The award of the contract must
3 be made on the basis of evaluation factors that must be stated in the
4 RFP. The contract file must contain the basis on which the award is
5 made and must be sufficient to satisfy external audit. Procedures and
6 requirements for the notification of intent to award the contract must
7 be the same as those provided in Section 11-35-1520(10).”
8

9 SECTION 23. Subarticle 3, Article 5, Chapter 35, Title 11 of the
10 1976 Code is amended by adding:

11
12 “Section 11-35-1535. (A) Conditions for Use.

13 (1) Competitive negotiations are most appropriate for
14 complex, major acquisitions.

15 (2) If the procurement officer determines in writing that the
16 use of competitive negotiations is appropriate and in the using
17 agency’s interest, a contract may be entered into by competitive
18 negotiations subject to the provisions of Section 11-35-1520 and the
19 ensuing regulations, unless otherwise provided in this section. This
20 section may not be used to acquire only commercially available
21 off-the-shelf products.

22 (3) Competitive negotiated acquisitions may be conducted
23 only by the office of the appropriate chief procurement officer.

24 (B) Definitions. As used in this section:

25 (1) ‘Clarification’ means any communication in which the
26 procurement officer requests or accepts information that clarifies
27 any information in a proposal. Clarification does not include the
28 request or acceptance of any change to the terms of a contractual
29 offer.

30 (2) ‘Competitive range’ means the offeror or group of
31 offerors selected for negotiation.

32 (3) ‘Negotiations’ means any communication that invites or
33 permits an offeror to change the terms of its contractual offer in any
34 way.

35 (C) Request for qualifications. Offerors may be prequalified as
36 provided in Section 11-35-1530(4).

37 (D) Requests for proposals.

38 (1)(a) Solicitations for competitive negotiations must be
39 requests for proposals and must, at a minimum, describe:

40 (i) the State’s requirements;

41 (ii) anticipated terms and conditions that will apply to the
42 contract. The solicitation may authorize offerors to propose

1 alternative terms and conditions, including alternative contract line
2 items;

3 (iii) information required to be in the offerors proposal;
4 and

5 (iv) evaluation factors.

6 (b) The request for proposals must state the relative
7 importance of all factors to be considered in evaluating proposals
8 but need not state a numerical weighting for each factor. Except as
9 provided by regulation, past performance and price must be
10 evaluated. If price is an evaluation factor, the solicitation must state
11 whether all evaluation factors other than price, when combined, are
12 significantly more important than, approximately equal to, or
13 significantly less important than price.

14 (2) Amendments. Amendments issued after the established
15 time and date for receipt of proposals may not exceed the general
16 scope of the request for proposals and must be issued to those
17 offerors that have not been eliminated from the competition.

18 (E) Public Notice. Adequate public notice of the request for
19 proposals must be given in the same manner as provided in Section
20 11-35-1520(3).

21 (F) Receipt of Proposals. Proposals must be opened in
22 accordance with regulations of the board. A tabulation of proposals
23 must be prepared in accordance with regulations promulgated by the
24 board and must be open for public inspection after contract award.

25 (G) Evaluation. Proposal evaluation is an assessment of the
26 proposal and the offeror's ability to perform the prospective contract
27 successfully. All proposals must be evaluated and, after evaluation,
28 their relative qualities must be assessed solely on the factors and
29 subfactors specified in the solicitation. The relative strengths,
30 deficiencies, significant weaknesses, and risks supporting proposal
31 evaluation must be documented in the contract file.

32 (H) Competitive Range. After complying with subsection (G),
33 the procurement officer shall establish a competitive range
34 comprised of the offerors that submitted the most promising offers.
35 Ordinarily, the competitive range should not include more than three
36 offerors. The procurement officer may select only one offeror and
37 may select more than three. The procurement officer shall document
38 the rationale for the selections.

39 (I) Exchanges with Offerors.

40 (1) Fairness and impartiality. The procurement officer shall
41 treat all offerors fairly and impartially when deciding whether and
42 when to seek clarification or to negotiate. Similarly situated offerors

1 must be given similar opportunities to clarify and, if in the
2 competitive range, to negotiate.

3 (2) Clarifications. The procurement officer may conduct
4 clarifications at any time before the award decision.

5 (3) Negotiations.

6 (a) The procurement officer shall negotiate with each
7 offeror in the competitive range. The primary objective is to
8 maximize the State's ability to obtain best value, based on the
9 requirements and the evaluation factors set forth in the solicitation.
10 Subject to item (1), the scope and extent of negotiations are a matter
11 of the procurement officer's judgement.

12 (b)(i) At a minimum, the procurement officer shall identify
13 and seek the elimination of any term of a contractual offer that does
14 not conform to a material requirement of a solicitation and any other
15 undesirable terms in a contractual offer.

16 (ii) The procurement officer may negotiate with offerors
17 to seek changes in their contractual offers that the State desires and
18 to allow them to make other improvements.

19 (iii) Negotiations may include pricing.

20 (iv) The procurement officer may not relax or change any
21 material term of the solicitation during negotiation except by
22 amendment.

23 (v) In conducting negotiations, the procurement officer
24 may not disclose confidential information derived from proposals
25 submitted by competing offerors.

26 (c) The procurement officer shall document the using
27 agency's prenegotiation objectives with regard to each offeror in the
28 competitive range and shall prepare a record of each negotiation
29 session.

30 (d) The procurement officer may eliminate an offeror from
31 the competitive range after negotiation if the offeror is no longer
32 consider to be among the most promising.

33 (4) The board must promulgate regulations governing
34 exchanges with offerors.

35 (J) Proposal Revisions. The procurement officer may request or
36 allow proposal revisions to clarify and document understandings
37 reached during negotiations. If an offeror's proposal is eliminated
38 or otherwise removed from the competitive range, no further
39 revisions to that offeror's proposal may be accepted or considered.
40 Upon the completion of negotiations, the contracting officer shall
41 request that offerors still in the competitive range submit final
42 proposals no later than a specified common cutoff date and time.

43 (K) Award.

1 (1) Award must be based on a comparative assessment of
2 final proposals from offerors within the competitive range against
3 all source selection criteria in the solicitation. Award must be made
4 to the responsible offeror whose final proposal meets the announced
5 requirements in all material respects and is determined in writing to
6 provide the best value to the State, taking into consideration the
7 evaluation factors set forth in the request for proposals and, if price
8 is an evaluation factor, any tradeoffs among price and non-price
9 factors. As provided by regulation, the contract file must document
10 the basis on which the award is made, and the documentation must
11 explain and justify the rationale for any business judgments and
12 tradeoffs made or relied on in the award determination, including
13 benefits associated with additional costs. Section 11-35-1524 does
14 not apply.

15 (2) Procedures and requirements for the notification of intent
16 to award the contract must be the same as those provided in Section
17 11-35-1520(1).”

18
19 SECTION 24. Section 11-35-1540 of the 1976 Code is amended
20 to read:

21
22 “Section 11-35-1540. When bids received pursuant to an
23 invitation for bids under Section 11-35-1520 are considered
24 unreasonable by the ~~procuring agency~~ procurement officer, or are
25 not independently reached in open competition, or the low bid
26 exceeds available funds as certified by the appropriate fiscal officer,
27 and it is determined in writing by the chief procurement officer, the
28 head of a purchasing agency, or the designee of either officer above
29 the level of procurement officer, that time or other circumstances
30 will not permit the delay required to resolicit competitive sealed
31 bids, a contract may be negotiated pursuant to this section, provided
32 that:

33 (1) each responsible bidder who submitted a bid under the
34 original solicitation is notified of the determination and is given
35 reasonable opportunity to negotiate;

36 (2) the negotiated price is lower than the lowest rejected bid
37 by any responsible and responsive bidder under the original
38 solicitation;

39 (3) the negotiated price is the lowest negotiated price offered
40 by any responsible and responsive offeror.”

41
42 SECTION 25. Section 11-35-1550 of the 1976 Code is amended
43 to read:

1

2 “Section 11-35-1550.(1) Authority. The following small
3 purchase procedures may be utilized only in conducting
4 procurements for governmental bodies that are up to ~~fifty thousand~~
5 ~~dollars in actual or potential value.~~ A governmental body may
6 ~~conduct its own procurement up to fifty thousand dollars in actual~~
7 ~~or potential value, and a governmental body that has received~~
8 ~~procurement certification pursuant to Section 11-35-1210 to handle~~
9 ~~the type and estimated value of the procurement may conduct the~~
10 ~~procurement under its own authority in accordance with this code~~
11 the amounts specified herein, but not in excess of the authority
12 granted pursuant to Section 11-35-1210. Procurement requirements
13 must not be artificially divided by governmental bodies so as to
14 constitute a small purchase pursuant to this section.

15 (2) Competition and Price Reasonableness.

16 (a) ~~Purchases not in excess of two thousand five hundred~~
17 ~~dollars. Except as provided in item (d), No competition.~~ Small
18 purchases not exceeding two ten thousand five hundred dollars may
19 be accomplished without securing competitive quotations if the
20 prices are considered reasonable. The purchasing office must
21 annotate the purchase requisition: ‘Price is fair and reasonable’ and
22 sign. The purchases must be distributed equitably among qualified
23 suppliers. When practical, a quotation must be solicited from other
24 than the previous supplier before placing a repeat order. The
25 administrative cost of verifying the reasonableness of the price of
26 purchase ‘not in excess of’ may more than offset potential savings
27 in detecting instances of overpricing. Action to verify the
28 reasonableness of the price need be taken only when the
29 procurement officer of the governmental body suspects that the
30 price may not be reasonable, comparison to previous price paid, or
31 personal knowledge of the item involved.

32 (b) ~~Purchases over two thousand five hundred dollars to ten~~
33 ~~thousand dollars. Except as provided in item (d), Three Written~~
34 Quotes. Written request for solicitation of written quotes from a
35 minimum of three qualified sources of supply ~~must~~ may be made
36 and, unless adequate public notice is provided in the South Carolina
37 Business Opportunities, documentation of ~~the quotes~~ at least three
38 bona fide, responsive, and responsible quotes must be attached to
39 the purchase requisition for a small purchase ~~over two thousand five~~
40 ~~hundred dollars but~~ not in excess of ten twenty-five thousand
41 dollars, or for a small purchase of commercially available
42 off-the-shelf products not in excess of one hundred thousand dollars,
43 or for a small purchase of construction not in excess of one hundred

1 thousand dollars. The award must be made to the lowest responsive
2 and responsible sources. The request for quotes must include a
3 purchase description. Requests must be distributed equitably among
4 qualified supplies unless advertised as provided above.

5 ~~(c) Purchases over ten thousand dollars up to fifty thousand~~
6 ~~dollars Advertised Small Purchase. Written solicitation of written~~
7 ~~quotes, bids, or proposals ~~must~~ may be made for a small purchase,~~
8 ~~other than a small purchase of construction, over ten thousand~~
9 ~~dollars but not in excess of fifty one hundred thousand dollars. The~~
10 ~~procurement must be advertised at least once in the South Carolina~~
11 ~~Business Opportunities publication ~~or through a means of central~~~~
12 ~~electronic advertising as approved by the designated board office. A~~
13 ~~copy of the written solicitation and written quotes must be attached~~
14 ~~to the purchase requisition. The award must be made to the lowest~~
15 ~~responsive and responsible source or, when a request for proposal~~
16 ~~process is used, the highest ranking offeror.~~

17 ~~(d) For public institutions of higher learning in this State~~
18 ~~excluding technical colleges, small purchase amounts to which the~~
19 ~~provisions of item (a) apply are those purchases not exceeding ten~~
20 ~~thousand dollars, and for these purchases item (b) does not apply. In~~
21 ~~addition, purchasing cards of the institution for these purchases also~~
22 ~~may be used by officials or employees of the institution as the~~
23 ~~governing board approves.~~

24 ~~(3) Advertising Threshold. Except for procurements of either~~
25 ~~commercially available off-the-shelf products or construction, if~~
26 ~~conducted pursuant to item(2)(b), all competitive procurements~~
27 ~~above ~~ten~~ twenty-five thousand dollars must be advertised at least~~
28 ~~once in the South Carolina Business Opportunities publication ~~or~~~~
29 ~~through a means of central electronic advertising as approved by the~~
30 ~~designated board office. Governmental bodies may charge vendors~~
31 ~~the cost incurred for copying and mailing bid or proposal documents~~
32 ~~requested in response to a procurement.~~

33 ~~(4) The Division of Aeronautics of the Department of~~
34 ~~Commerce may act as its own purchasing agency for all~~
35 ~~procurements of maintenance services for aircraft and these~~
36 ~~procurements may be conducted pursuant to subsection (2)(b).~~

37 ~~(5) For a technical college authorized by the State Board for~~
38 ~~Technical and Comprehensive Education, small purchase amounts~~
39 ~~to which the provisions of subsection (2)(a) apply are those~~
40 ~~purchases up to an amount not to exceed ten thousand dollars. If~~
41 ~~authority is approved, a technical college may use purchasing cards~~
42 ~~for these purchases up to the amount approved by the State Board~~
43 ~~for Technical and Comprehensive Education.”~~

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SECTION 26. Section 11-35-1560 of the 1976 Code is amended to read:

“Section 11-35-1560. (A) A contract may be awarded for a supply, service, information technology, or construction item without competition if, under regulations promulgated by the board, the chief procurement officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer, determines in writing that there is only one source for the required supply, service, information technology, or construction item. Except for contracts with a total potential value of fifty thousand dollars or less, adequate public notice of the intent to award without competition must be posted in South Carolina Business Opportunities, except that public notice is not required if the appropriate chief procurement officer, after consultation with the head of the purchasing agency, determines in writing that award without such notice is in the interest of the State. Notice must contain a statement of the right to protest under Section 11-35-4210(1) and must be posted at least five business days before entering a contract. For contracts with a total potential value greater than two hundred fifty thousand dollars, such notice must be posted at least ten business days before entering a contract.

(B) ~~These regulations must include the requirements contained in this paragraph.~~ Written documentation must include the determination and basis for the proposed sole source procurement. A delegation of authority by either the chief procurement officer or the head of a governmental body with respect to sole source determinations must be submitted in writing to the Materials Management Officer. In cases of reasonable doubt, competition must be solicited. Any decision by a governmental body that a procurement be restricted to one potential vendor must be accompanied by ~~an~~ a thorough, detailed explanation as to why no other will be suitable or acceptable to meet the need.

(C) A violation of these regulations by a purchasing agency, upon recommendation of the ~~designated board office~~ Division of Procurement Services with approval of the majority of the ~~State Fiscal Accountability Authority board~~, must result in the temporary suspension, not to exceed one year, of the violating governmental body’s ability to procure supplies, services, information technology, or construction items pursuant to this section.”

1 SECTION 27. Section 11-35-1570 of the 1976 Code is amended
2 to read:

3
4 “Section 11-35-1570. (A) Notwithstanding any other provision
5 of this code, the chief procurement officer, the head of a purchasing
6 agency, or a designee of either officer may ~~make award~~ or authorize
7 others to ~~make award~~ emergency ~~procurements~~ ~~contracts~~ only when
8 there exists an immediate threat to public health, welfare, critical
9 economy and efficiency, or safety under emergency conditions as
10 defined in regulations promulgated by the board; and provided, that
11 such emergency procurements shall be made with as much
12 competition as is practicable under the circumstances. A written
13 determination of the basis for the emergency and for the selection of
14 the particular contractor shall be included in the contract file.

15 (B) When a contract entered pursuant to subsection (A) has a
16 total or potential value in excess of fifty thousand dollars, notice of
17 the award must be posted in South Carolina Business Opportunities
18 (SCBO) as soon as practicable thereafter. The posted notice must
19 contain a statement of the right to protest under Section
20 11-35-4210(1).”

21
22 SECTION 28. Subarticle 5, Article 5, Chapter 35, Title 11 of the
23 1976 Code is amended by adding:

24
25 “Section 11-35-1610. A change order or a contract modification
26 may not alter a contract in a manner or degree inconsistent with the
27 underlying purposes and policies of this code or the regulations of
28 the board.”

29
30 SECTION 29. Section 11-35-1810(3) of the 1976 Code is
31 amended to read:

32
33 “(3) Right of Nondisclosure. Except as otherwise provided by
34 law, information furnished by a bidder or offeror pursuant to this
35 section shall not be disclosed outside of the offices of the board, the
36 Office of the Attorney General, the using agency, or the purchasing
37 agency without prior written consent by the bidder or offeror.

38 (4) Public procurement units, as defined in Section 11-35-4610,
39 may provide information to one another relating to the responsibility
40 or prior performance of a bidder or offeror, or provide any other
41 information about a bidder or offeror that is otherwise related to
42 procurement. Any person affiliated with a public procurement unit
43 in an official capacity, who provides such information in good faith,

1 is immune from civil and criminal liability which might otherwise
2 result by reason of his actions. In all such civil or criminal
3 proceedings, good faith is a rebuttable presumption.”
4

5 SECTION 30. Section 11-35-1830 of the 1976 Code is amended
6 to read:

7
8 “Section 11-35-1830. (1) Contractor Certification. A contractor
9 shall, except as provided in subsection (3) of this section, submit
10 cost or pricing data and shall certify that, to the best of his
11 knowledge and belief, the cost or pricing data submitted is accurate,
12 complete, and current as of mutually determined specified date prior
13 to the date of:

14 (a) the pricing of any contract awarded by competitive sealed
15 proposals pursuant to Section 11-35-1530, by competitive
16 negotiations pursuant to Section 11-35-1535, or pursuant to the sole
17 source procurement authority as provided in Section 11-35-1560
18 where the total contract price exceeds an amount established by the
19 board in regulations; or

20 (b) the pricing of any change order or contract modification
21 which exceeds an amount established by the board in regulations.

22 (2) Price Adjustment. Any contract, change order or contract
23 modification under which a certificate is required shall contain a
24 provision that the price to the State, including profit or fee, shall be
25 adjusted to exclude any significant sums by which the State finds
26 that such price was increased because the contractor furnished cost
27 or pricing data was inaccurate, incomplete, or not current as of the
28 date agreed upon between parties.

29 (3) Cost or Pricing Data Not Required. The requirements of this
30 section shall not apply to contracts:

31 (a) where the contract price is based on adequate price
32 competition;

33 (b) where the contract price is based on established catalog
34 prices or market prices;

35 (c) where contract prices are set by law or regulations; ~~or~~

36 (d) where it is determined in writing in accordance with
37 regulations promulgated by the board that the requirements of this
38 section may be waived and the reasons for such waiver are stated in
39 writing.”

40 SECTION 31. Subarticle 7, Article 5, Chapter 35, Title 11 of the
41 1976 Code is amended by adding:

42

1 “Section 11-35-1840. The board may promulgate regulations to
2 prescribe responsibilities, general rules, and procedures for
3 identifying, evaluating, and resolving organizational conflicts of
4 interest. The aims of such regulations are preventing the existence
5 of conflicting roles that might bias a contractor’s judgement, and
6 preventing unfair competitive advantage.”

7
8 SECTION 32. Subarticle 9, Article 5, Chapter 35, Title 11 of the
9 1976 Code is amended by adding:

10
11 “Section 11-35-2015. A contract or amendment thereto,
12 including, but not limited to, a change order or contract
13 modification, is not effective against a governmental body unless
14 the contract or amendment is in writing and signed by an officer
15 having actual authority to bind the governmental body.”

16
17 SECTION 33. Section 11-35-2030 of the 1976 Code is amended
18 to read:

19
20 “Section 11-35-2030. (1) Specified Period. Unless otherwise
21 provided by law, a contract for supplies, services, or information
22 technology must not be entered into for any a period of more than
23 one year unless approved in a manner prescribed by regulation of
24 the board. The term of the contract and conditions of renewal or
25 extension must be included in the solicitation and funds must be
26 available for the first fiscal period at the time of contracting.
27 Payment and performance obligations for succeeding fiscal periods
28 must be subject to the availability and appropriation of funds for
29 them.

30 (2) Determination Prior to Use. Before the utilization of a
31 multi-term contract, it must be determined in writing by the
32 appropriate governmental body that:

33 (a) estimated requirements cover the period of the contract
34 and are reasonably firm and continuing; and

35 (b) such a contract serves the ~~best interests~~ interest of the State
36 by encouraging effective competition or otherwise promoting
37 economies in state procurement.

38 (3) Cancellation Due to Unavailability of Funds in Succeeding
39 Fiscal Periods. When funds are not appropriated or otherwise made
40 available to support continuation of performance in a subsequent
41 fiscal period, the contract must be canceled.

42 (4) Maximum Duration. The maximum ~~time~~ potential duration
43 for a ~~multiterm~~ contract is five years. ~~Contract terms~~ A maximum

1 potential duration of up to seven years may be approved by the
2 ~~designated board officer~~ appropriate chief procurement officer.
3 ~~Contracts exceeding seven years must be approved by the board.~~

4 (5) Authority Approval. Every type of contract with a maximum
5 potential duration exceeding seven years must be approved by the
6 board. For competitive procurements, approval of the maximum
7 potential duration must be granted before solicitation."

8
9 SECTION 34. Subarticle 9, Article 5, Chapter 35, Title 11 of the
10 1976 Code is amended by adding:

11
12 "Section 11-35-2040. The following laws are inapplicable to
13 contracts solely for the procurement of commercially available
14 off-the-shelf products pursuant to Section 11-35-1550:

15 (1) Chapter 14, Title 8, Unauthorized Aliens and Public
16 Employment;

17 (2) Section 11-9-105, Contracts for legal or consultant services;

18 (3) Section 11-35-5300, Prohibition of contracting with
19 discriminatory business;

20 (4) Chapter 57, Title 11, Iran Divestment Act;

21 (5) Chapter 107, Title 44, Drug-Free Workplace Act; and

22 (6) any other provision of law identified by regulation of the
23 board, that the board determines sets forth policies, procedures, or
24 requirements that impact the procurement of commercially available
25 off-the-shelf products by the State, except for a provision of law
26 that: (i) provides for criminal or civil penalties; (ii) appears in
27 Article 17 of this chapter; or (iii) specifically refers to this section
28 and provides that, notwithstanding this section, it is applicable to
29 contracts for the procurement of commercially available
30 off-the-shelf products."

31
32 SECTION 35. Subarticle 9, Article 5, Chapter 35, Title 11 of the
33 1976 Code is amended by adding:

34
35 "Section 11-35-2050. Any term or condition in any contract
36 entered into by the State that requires the State to defend, indemnify,
37 or hold harmless another person, must be void ab initio, unless such
38 term is expressly authorized by law. All contracts must be governed
39 by South Carolina law. Without limiting the applicability of Section
40 11-35-4230, the exclusive venue for any dispute arising out of or
41 related to any contract is in South Carolina. Any contract containing
42 any terms or conditions inconsistent with any of the foregoing are

1 otherwise enforceable as if it did not contain such term or
2 condition.”

3

4 SECTION 36. Section 11-35-2410(A) of the 1976 Code is
5 amended to read:

6

7 “(A) The determinations required by the following sections and
8 related regulations are final and conclusive, unless clearly
9 erroneous, arbitrary, capricious, or contrary to law: Section
10 11-35-1520(7) (Competitive Sealed Bidding: Correction or
11 Withdrawal of Bids; Cancellation of Awards), Section
12 11-35-1520(11) (Competitive Sealed Bidding: Request for
13 Qualifications), Section 11-35-1525(1) (Competitive Fixed Price
14 Bidding: Conditions for Use), Section 11-35-1528(1) (Competitive
15 Best Value Bidding: Conditions for Use), Section 11-35-1528(8)
16 (Competitive Best Value Bidding: Award), Section 11-35-1529(1)
17 (Competitive Online Bidding: Conditions for Use), Section
18 11-35-1530(1) (Competitive Sealed Proposals, Conditions for Use),
19 Section 11-35-1530(4) (Competitive Sealed Proposals: Request for
20 Qualifications), Section 11-35-1530(7) (Competitive Sealed
21 Proposals, Selection and Ranking of Prospective Offerors), Section
22 11-35-1530(9) (Competitive Sealed Proposals Award), Section
23 11-35-1535(A) (Competitive Negotiations: Conditions for Use),
24 Section 11-35-1535(C) (Competitive Negotiations: Request for
25 Qualifications), Section 11-35-1535(G) (Competitive Negotiations:
26 Evaluation), Section 11-35-1535(H) (Competitive Negotiations:
27 Competitive Range), Section 11-35-1535(J) (Competitive
28 Negotiations: Proposal Revisions, elimination or removal from the
29 competitive range), Section 11-35-1535(K) (Competitive
30 Negotiations: Award), Section 11-35-1540 (Negotiations After
31 Unsuccessful Competitive Sealed Bidding), Section 11-35-1560
32 (Sole Source Procurement), Section 11-35-1570 (Emergency
33 Procurement), Section 11-35-1710 (Cancellation of Invitation for
34 Bids or Requests for Proposals), Section 11-35-1810(2)
35 (Responsibility of Bidders and Offerors, ~~Determination of~~
36 ~~Nonresponsibility~~), Section 11-35-1830(3) (Cost or Pricing Data,
37 Cost or Pricing Data Not Required), Section 11-35-2010 (Types and
38 Forms of Contracts), Section 11-35-2020 (Approval of Accounting
39 System), Section 11-35-2030(2) (Multi-Term Contracts,
40 Determination Prior to Use), Section 11-35-3010(1) (Choice of
41 Project Delivery Method), Section 11-35-3020(2)(d) (Construction
42 Procurement Procedures: Negotiations after Unsuccessful
43 Competitive Sealed Bidding), Section 11-35-3023 (Prequalification

1 on State Construction), Section 11-35-3220(5) (Procurement
2 Procedure, Selection and Ranking of the ~~Five~~ Three Most
3 Qualified), Section 11-35-4210(7) (Stay of Procurement During
4 Protests, Decision to Proceed), and Section 11-35-4810
5 (Cooperative Use of Supplies, Services, or Information
6 Technology).”

7
8 SECTION 37. Section 11-35-2420 of the 1976 Code is amended
9 to read:

10
11 “Section 11-35-2420. (A) When any information or allegations
12 concerning anticompetitive practices among any bidders or offerors,
13 come to the attention of any employee of the State, immediate notice
14 of the relevant facts shall be transmitted to the Office of the Attorney
15 General.

16 (B) Communications to the Office of the Attorney General and
17 any testimony relating to the matters described in Section
18 11-35-2420(A) are privileged and may not be disclosed without
19 prior approval of the Office of the Attorney General. A person
20 required or permitted to report pursuant to Section 11-35-2420(A)
21 or who participates in an investigation or judicial proceedings
22 resulting from the report, acting in good faith, is immune from civil
23 and criminal liability which might otherwise result by reason of
24 these actions. In all such civil or criminal proceedings, good faith is
25 a rebuttable presumption.”

26
27 SECTION 38. Section 11-35-3010 of the 1976 Code is amended
28 by adding an appropriately numbered subsection to read:

29 “() In addition to the requirement of subsection (1), use of the
30 project delivery methods authorized by Section 11-35-3005(1)(e),
31 (1)(f), and (2) must be approved by the board if the total potential
32 value of the overall transaction exceeds twenty-five million dollars.”

33
34 SECTION 39. Section 11-35-3015(1), (5), (6), and (7) of the 1976
35 Code is amended to read:

36
37 “(1) Scope. This section specifies the source selection methods
38 applicable to procurements for the project delivery methods
39 identified in Section 11-35-3005 (Project delivery methods
40 authorized), except as provided in Sections 11-35-1550 (Small
41 Purchases), 11-35-1560 (Sole Source Procurement), ~~and~~
42 11-35-1570 (Emergency Procurements), 11-35-3230 (Exception for
43 small architect-engineer, and land surveying services contract),

1 11-35-3310 (Indefinite quantity contracts for
2 architectural-engineering, and land surveying services), and
3 11-35-3320 (Indefinite quantity contracts for construction).
4

5 (5) Design-build. Contracts for design-build must be procured
6 by competitive sealed proposals, as provided in Section 11-35-1530
7 (Competitive Sealed Proposals), ~~except that the regulations may~~
8 ~~describe the circumstances under which a particular design-build~~
9 ~~procurement does not require the submission of proposal~~
10 ~~development documents as required in Section 11-35-3024(2)(b) or~~
11 competitive negotiation, as provided in Section 11-35-1535
12 (Competitive Negotiations).

13 (6) Design-build-operate-maintain. Contracts for
14 design-build-operate-maintain must be procured by competitive
15 sealed proposals, as provided in Section 11-35-1530 (Competitive
16 Sealed Proposals) or competitive negotiation, as provided in Section
17 11-35-1535 (Competitive Negotiations).

18 (7) Design-build-finance-operate-maintain. Contracts for
19 design-build-finance-operate-maintain must be procured by
20 competitive sealed proposals, as provided in Section 11-35-1530
21 (Competitive Sealed Proposals) or Section 11-35-1535
22 (Competitive Negotiations).”
23

24 SECTION 40. Section 11-35-3020 of the 1976 Code is amended
25 to read:

26
27 “Section 11-35-3020. Exceptions in Competitive Sealed Bidding
28 Procedures. The process of competitive sealed bidding as required
29 by Section 11-35-3015(2)(b) must be performed in accordance with
30 the procedures outlined in Article 5 of this code subject to the
31 following exceptions:

32 (a) Invitation for Bids. Each governmental body is responsible
33 for developing a formal invitation for bids for each state
34 construction project. The invitation must include, but not be limited
35 to, all contractual terms and conditions applicable to the
36 procurement. A copy of each invitation for bids must be filed with
37 the State Engineer’s Office and must be advertised formally in an
38 official state government publication. Adequate notice of the
39 invitation for bids must be given at a reasonable time before the date
40 set forth in it for the opening of bids. The manner in which this
41 official state government publication must be published, the content
42 of the publication itself, the frequency of the publication, the method
43 of subscription to the publication, and the manner by which the

1 publication is distributed must be established by regulation of the
2 board.

3 (b) Bid Acceptance. Instead of Section 11-35-1520(6), the
4 following provision applies. Bids must be accepted unconditionally
5 without alteration or correction, except as otherwise authorized in
6 this code. The governmental body's invitation for bids must set forth
7 all requirements of the bid including, but not limited to:

8 (i) The governmental body, in consultation with the
9 architect-engineer assigned to the project, shall identify by ~~specialty~~
10 license classification or subclassification in the invitation for bids
11 all subcontractors who are expected to perform work for the prime
12 contractor to or about the construction when those subcontractors'
13 contracts are each expected to exceed three percent of the prime
14 contractor's total base bid. In addition, the governmental body, in
15 consultation with the architect-engineer assigned to the project, may
16 identify by ~~specialty~~ license classification or subclassification in the
17 invitation for bids a subcontractor who is expected to perform work
18 which is vital to the project. The determination of which
19 subcontractors are included in the list provided in the invitation for
20 bids is not protestable pursuant to Section 11-35-4210 or another
21 provision of this code. A bidder in response to an invitation for bids
22 shall ~~set forth~~ clearly identify in his bid ~~the name of~~ only those
23 subcontractors to perform the work as identified in the invitation for
24 bids. If the bidder determines to use his own employees to perform
25 a portion of the work for which he would otherwise be required to
26 list a subcontractor and if the bidder is qualified to perform that work
27 under the terms of the invitation for bids, the bidder shall list himself
28 in the appropriate place in his bid and not subcontract that work
29 except with the approval of the governmental body for good cause
30 shown.

31 (ii) Failure to complete the list provided in the invitation for
32 bids renders the bidder's bid unresponsive.

33 (iii) The governmental body shall send all responsive bidders
34 a copy of the bid tabulation within ten working days following the
35 bid opening.

36 (c) Instead of Section 11-35-1520(10), the following provisions
37 apply:

38 (i) Unless there is a compelling reason to reject bids as
39 prescribed by regulation of the board, notice of an intended award
40 of a contract to the lowest responsive and responsible bidder whose
41 bid meets the requirements set forth in the invitation for bids must
42 be given by posting the notice at a location that is specified in the
43 invitation for bids. The invitation for bids and the posted notice must

1 contain a statement of the bidder's right to protest pursuant to
2 Section 11-35-4210(1) and the date and location of posting must be
3 announced at bid opening. In addition to posting notice, the
4 governmental body promptly shall send all responsive bidders a
5 copy of the notice of intended award and of the bid tabulation. The
6 mailed notice must indicate the posting date and must contain a
7 statement of the bidder's right to protest pursuant to Section
8 11-35-4210(1).

9 (ii) After ~~ten~~ five business days' notice is given, the
10 governmental body may enter into a contract with the bidder named
11 in the notice in accordance with the provisions of this code and of
12 the bid solicited. The procurement officer must comply with Section
13 11-35-1810.

14 (iii) If, at bid opening, only one bid is received and determined
15 to be responsive and responsible and within the governmental
16 body's construction budget, award may be made without the ~~ten~~
17 five-day waiting period.

18 (d) Negotiations after Unsuccessful Competitive Sealed
19 Bidding. Instead of Section 11-35-1540, the following provisions
20 apply:

21 (i) If bids received pursuant to an invitation for bids exceed
22 available funds, and it is determined in writing by the governmental
23 body that circumstances do not permit the delay required to resolicit
24 competitive sealed bids, and the base bid, less deductive alternates,
25 does not exceed available funds by an amount greater than ten
26 percent of the construction budget established for that portion of the
27 work, a contract may be negotiated pursuant to this section with the
28 lowest responsible and responsive bidder. The governmental body
29 may change the scope of the work to reduce the ~~cost~~ price to be
30 within the established construction budget but may not reduce the
31 ~~cost~~ price below the established construction budget more than ten
32 percent without a written request by the agency and the written
33 approval of the chief procurement officer based on the ~~best~~ interest
34 of the State.

35 (ii) If the lowest base bid received pursuant to an invitation
36 for bids exceeds approved available funds and the governmental
37 body is able to identify additional funds for the project, as certified
38 by the appropriate fiscal officers, in the amount of the difference
39 between the lowest base bid and the approved available funds for
40 the project, the governmental body shall submit ~~its~~ a request to use
41 those additional funds ~~to the board and the Joint Bond Review~~
42 ~~Committee~~ in accordance with ~~Sections 2-47-40 and 2-47-50~~
43 Chapter 47, Title 2."

1

2 SECTION 41. Section 11-35-3023 of the 1976 Code is amended
3 to read:

4

5 “Section 11-35-3023. ~~(A)~~ In accordance with this section, the
6 applicable section of Article 5, and procedures published by the
7 State Engineer, a governmental body may limit participation in a
8 solicitation for construction to only those businesses, including
9 potential subcontractors, that are prequalified. The prequalification
10 process may be used only with the approval and supervision of the
11 State Engineer’s Office. ~~If businesses are prequalified, the~~
12 ~~governmental body must issue a request for qualifications. Adequate~~
13 ~~public notice of the request for qualifications must be given in the~~
14 ~~manner provided in Section 11-35-1520(3). The request must~~
15 ~~contain, at a minimum, a description of the general scope of work to~~
16 ~~be acquired, the deadline for submission of information, and how~~
17 ~~businesses may apply for consideration. The evaluation criteria must~~
18 ~~include, but not be limited to, prior performance, recent past~~
19 ~~references on all aspects of performance, financial stability, and~~
20 ~~experience on similar construction projects. Using only the criteria~~
21 ~~stated in the request for qualifications, businesses must be ranked~~
22 ~~from most qualified to least qualified. The basis for the ranking must~~
23 ~~be determined in writing. If fewer than two businesses are~~
24 ~~prequalified, the prequalification process must be canceled. The~~
25 ~~determination regarding how many offers to solicit is not subject to~~
26 ~~review pursuant to Article 17 of this code. Section 11-35-1520(4)~~
27 ~~(Request for Qualifications) and Section 11-35-1530(4) (Request~~
28 ~~for Qualifications) do not apply to a procurement of construction.~~

29 ~~(B) In a design bid build procurement, the prequalification~~
30 ~~process may be used only if the construction involved is unique in~~
31 ~~nature, over ten million dollars in value, or involves special~~
32 ~~circumstances, as determined by the State Engineer. In a~~
33 ~~design bid build procurement, the minimum requirements for~~
34 ~~prequalification must be published in the request for qualifications.~~
35 ~~Offers must be sought from all businesses that meet the published~~
36 ~~minimum requirements for prequalification.”~~

37

38 SECTION 42. Section 11-35-3024(1) and (2) of the 1976 Code is
39 amended to read:

40

41 “(1) Applicability. In addition to the requirements of Section
42 11-35-1530 (Competitive Sealed Proposals) or Section 11-35-1535

1 (Competitive Negotiations), the procedures in this section apply as
2 provided in items (2), (3), and (4) below.

3 (2) Content of Request for Proposals. A Request for Proposals
4 for design-build, design-build-operate-maintain, or
5 design-build-finance-operate-maintain:

- 6 (a) must include design requirements;
- 7 (b) must solicit proposal development documents; and
- 8 (c) may, if the governmental body determines that the cost of
9 preparing proposals is high in view of the size, estimated price, and
10 complexity of the procurement:

- 11 (i) prequalify offerors in accordance with Section
12 11-35-3023 by issuing a request for qualifications in advance of the
13 request for proposals;

- 14 (ii) select, pursuant to procedures designated in the Manual
15 for Planning and Execution of State Permanent Improvements, a
16 short list of responsible offerors who submit proposals determined
17 to be reasonably susceptible of being selected for award before
18 discussions and evaluations pursuant to Section 11-35-1530, if the
19 number of proposals to be short-listed is stated in the Request for
20 Proposals and prompt public notice is given to all offerors as to
21 which proposals have been short-listed; or

- 22 (iii) pay stipends to unsuccessful offerors, if the amount of
23 the stipends and the terms under which stipends are paid are stated
24 in the Request for Proposals.

25 Subsection (2)(c)(ii) is inapplicable if competitive negotiations
26 are conducted pursuant to Section 11-35-1535.”

27
28 SECTION 43. Section 11-35-3030(1) and (2)(a) of the 1976 Code
29 is amended to read:

30
31 “(1) Bid Security.

- 32 (a) Requirement for Bid Security. Bid security is required for
33 all competitive sealed bidding for construction contracts in a
34 design-bid-build procurement in excess of ~~fifty~~ one hundred
35 thousand dollars and other contracts as may be prescribed by the
36 State Engineer’s Office. Bid security is a bond provided by a surety
37 company meeting the criteria established by the regulations of the
38 board or otherwise supplied in a form that may be established by
39 regulation of the board.

- 40 (b) Amount of Bid Security. Bid security must be in an
41 amount equal to at least five percent of the amount of the bid at a
42 minimum.

1 (c) Rejection of Bids for Noncompliance with Bid Security
2 Requirements. When the invitation for bids requires security,
3 noncompliance requires that the bid be rejected except that a bidder
4 who fails to provide bid security in the proper amount or a bid bond
5 with the proper rating must be given one working day from bid
6 opening to cure the deficiencies. If the bidder is unable to cure these
7 deficiencies within one working day of bid opening, his bid must be
8 rejected.

9 (d) Withdrawal of Bids. After the bids are opened, they must
10 be irrevocable for the period specified in the invitation for bids. If a
11 bidder is permitted to withdraw its bid ~~before bid opening pursuant~~
12 ~~to Section 11-35-1520(7)~~ in accordance with regulations
13 promulgated by the board, action must not be had against the bidder
14 or the bid security.

15 (2) Contract Performance Payment Bonds.

16 (a) When Required-Amounts. Contracts for construction
17 must require the following bonds or security ~~must be delivered to~~
18 ~~the governmental body and become binding on the parties upon the~~
19 ~~execution of the contract for construction:~~

20 (i) a performance bond satisfactory to the State, executed
21 by a surety company meeting the criteria established by the board in
22 regulations, or otherwise secured in a manner satisfactory to the
23 State, in an amount equal to one hundred percent of the portion of
24 the contract price that does not include the cost of operation,
25 maintenance, and finance;

26 (ii) a payment bond satisfactory to the State, executed by a
27 surety company meeting the criteria established by the board in
28 regulations, or otherwise secured in a manner satisfactory to the
29 State, for the protection of all persons supplying labor and material
30 to the contractor or its subcontractors for the performance of the
31 construction work provided for in the contract. The bond must be in
32 an amount equal to one hundred percent of the portion of the
33 contract price that does not include the cost of operation,
34 maintenance, and finance;

35 (iii) in the case of a construction contract valued at fifty
36 thousand dollars or less, the governmental body may waive the
37 requirements of subitems (i) and (ii) above, if the governmental
38 body has protected the State;

39 (iv) in the case of a construction manager at-risk contract,
40 the solicitation may provide that bonds or security are not required
41 during the project's preconstruction or design phase, if construction
42 does not commence until the requirements of subitems (i) and (ii)
43 above have been satisfied. Additionally, the solicitation may

1 provide that bonds or security as described in subitems (i) and (ii)
2 above may be furnished for one or more designated portions of the
3 project, in an amount equal to one hundred percent of the value of
4 the construction of each designated portion, and also may prescribe
5 the time of delivery of the bonds or security. In no event may
6 construction of any portion of the work commence until the
7 appropriate bonds or security have been delivered to the
8 governmental body.

9 (v) in the case of design-build, design-build-operate-maintain, or
10 design-build-finance-operate-maintain contract, the solicitation
11 may provide that bonds or security as described in subitems (i) and
12 (ii) above may be furnished for one or more designated portions of
13 the project, in an amount equal to one hundred percent of the value
14 of the design and construction of each designated portion, and also
15 may prescribe the time of delivery of the bonds or security. In no
16 event may design or construction of any portion of the work
17 commence until the appropriate bonds or security have been
18 delivered to the governmental body.”

19

20 SECTION 44. Section 11-35-3040(1)(a) of the 1976 Code is
21 amended to read:

22

23 “(a) the unilateral right of a governmental body to order in
24 writing:

25 (i) all changes in the work within the general scope of the
26 contract, and

27 (ii) all changes in the time of performance of the contract
28 which do not alter the general scope of the contract work;”

29

30 SECTION 45. Section 11-35-3070 of the 1976 Code is amended
31 to read:

32

33 “Section 11-35-3070. Consistent with any applicable regulation
34 of the board, a governmental body may approve and pay for
35 amendments to architectural/engineering contracts and change
36 orders to construction contracts, within the governmental body’s
37 ~~certification~~ authority, which do not alter the ~~original~~ general scope
38 or intent of the project and which do not exceed the previously
39 approved project budget.”

40

41 SECTION 46. Section 11-35-3220(2)(b) and (3) of the 1976 Code
42 is amended to read:

43

1 “(b) The invitation must include, but not be limited to, the project
2 title, the general scope of work, a description of all professional
3 services required for that project, the submission deadline, and how
4 interested firms may apply for consideration. The agency selection
5 committee shall file a copy of the project description and the
6 invitation with the State Engineer’s Office. Adequate notice of the
7 invitation must be given at a reasonable time before the date set forth
8 in it for receipt of responses. The invitation must be advertised
9 formally in an official state government publication. The manner in
10 which this official state government publication must be published,
11 the content of the publication itself, the frequency of the publication,
12 the method for subscription to the publication, and the manner by
13 which the publication is distributed must be established by
14 regulation of the board.

15 (3) Response to Invitation. The date for submission of
16 information from interested persons or firms in response to an
17 invitation must not be less than fifteen days after publication of the
18 invitation. Interested architect- engineer, construction management,
19 and land surveying persons or firms shall respond to the invitation
20 with the submission of a current and accurate Federal Standard
21 Form ~~254~~ 330, Architect-Engineer and Related Services
22 Questionnaire, ~~and Federal Standard Form 255, Architect-Engineer~~
23 ~~and Related Services Questionnaire for Specific Project~~, or their
24 successor ~~forms~~ form or similar information as the ~~board may~~
25 ~~prescribe by regulation~~ State Engineer may specify in the Manual
26 for Planning and Execution of State Permanent Improvement
27 Projects, Part II, and other information that the particular invitation
28 may require.”

29
30 SECTION 47. Section 11-35-3230 of the 1976 Code is amended
31 to read:

32
33 “Section 11-35-3230. (1) Procurement Procedures for Certain
34 Contracts. A governmental body securing architect-engineer,
35 construction management, or land surveying ~~service~~ services which
36 ~~is are~~ estimated not to exceed ~~twenty-five~~ fifty thousand dollars may
37 award contracts by direct negotiation and selection, taking into
38 account:

- 39 (a) the nature of the project;
40 (b) the proximity of the architect-engineer or land surveying
41 services to the project;
42 (c) the capability of the architect, engineer, or land surveyor
43 to produce the required service within a reasonable time;

- 1 (d) past performance; and
2 (e) ability to meet project budget requirements.

3 (2) ~~Maximum Fees Payable to~~ Value of Small Contracts with
4 One Person or Firm. The total value of contracts awarded to a single
5 architectural engineering, construction management, or land
6 surveying firm by a single governmental body pursuant to
7 subsection (1) may not exceed one hundred fifty thousand dollars in
8 a twenty-four-month period ~~Fees paid during the twenty-four month~~
9 ~~period immediately preceding negotiation of the contract by a single~~
10 ~~governmental body for professional services performed by an~~
11 ~~architectural engineering or land surveying firm pursuant to Section~~
12 ~~11-35-3230(1) may not exceed seventy-five thousand dollars.~~
13 Persons or firms seeking to render professional services pursuant to
14 this section shall furnish the governmental body with whom the firm
15 is negotiating a list of professional services, including fees paid for
16 them, performed for the governmental body during the fiscal year
17 immediately preceding the fiscal year in which the negotiations are
18 occurring and during the fiscal year in which the negotiations are
19 occurring.

20 (3) Submission of Contracts to State Engineer's Office. Copies
21 of contracts, including the negotiated scope of services and fees,
22 awarded pursuant to this section must be submitted to the State
23 Engineer's Office for information.

24 (4) Splitting of Larger Projects Prohibited. A governmental
25 body may not break a project into small projects for the purpose of
26 circumventing the provisions of Section 11-35-3220 and this
27 section.

28 (5) When negotiating a contract pursuant to this section, a
29 governmental body may not negotiate with a firm unless any
30 unsuccessful negotiations with a different firm have been concluded
31 in writing. Once negotiations with a firm have been concluded,
32 negotiations may not be reopened."

33
34 SECTION 48. Article 10, Chapter 35, Title 11 of the 1976 Code
35 is amended by adding:

36
37 "Section 11-35-3305. With the approval of the appropriate chief
38 procurement officer, and in accordance with any applicable
39 regulations, a procurement officer may establish contracts providing
40 for an indefinite quantity, within state maximum or minimum limits,
41 of specified supplies, service, or information technology, to be
42 furnished during a fixed period, and that provide for the issuance of
43 orders for delivery or performance of individual requirements

1 during the period of the contract. The appropriate chief procurement
2 officer may establish the contracts on behalf of any governmental
3 body or for use by any public procurement unit.”

4
5 SECTION 49. Section 11-35-3310 of the 1976 Code is amended
6 to read:

7
8 “Section 11-35-3310. (1) General Applicability. Indefinite
9 ~~delivery quantity~~ contracts may be awarded on an as-needed basis
10 for ~~construction services pursuant to the procedures in Section~~
11 ~~11-35-3015(2)(b) and for~~ architectural-engineering and
12 land-surveying services pursuant to Section 11-35-3220.

13 ~~(a) Construction Services. When construction services~~
14 ~~contracts are awarded, each contract must be limited to a total~~
15 ~~expenditure of seven hundred fifty thousand dollars for a two year~~
16 ~~period with individual project expenditures not to exceed one~~
17 ~~hundred fifty thousand dollars; however, for public institutions of~~
18 ~~higher learning, and for technical college service contracts~~
19 ~~authorized by the State Board for Technical and Comprehensive~~
20 ~~Education, these limits shall be one million dollars for total~~
21 ~~expenditures and two hundred fifty thousand dollars for individual~~
22 ~~expenditures within the time periods specified.~~

23 ~~(b) (2) Architectural-Engineering and Land-Surveying~~
24 ~~Services. When architectural-engineering and land-surveying~~
25 ~~services contracts are awarded, each contract must be limited to a~~
26 ~~total expenditure of three hundred thousand dollars for a two-year~~
27 ~~period with individual project expenditures not to exceed one~~
28 ~~hundred thousand dollars; however, for public institutions of higher~~
29 ~~learning, and for technical college service contracts authorized by~~
30 ~~the State Board for Technical and Comprehensive Education, these~~
31 ~~limits shall be five hundred thousand dollars for total expenditures~~
32 ~~and two hundred thousand dollars for individual expenditures within~~
33 ~~the time periods specified.~~

34 ~~(2)(3) Small Indefinite Delivery Quantity Contracts. Small~~
35 ~~indefinite delivery quantity~~ contracts for architectural-engineering
36 and land-surveying services may be procured as provided in Section
37 11-35-3230. A contract established under this section must be
38 subject to Section 11-35-3230, and any applicable regulations
39 ~~promulgated except that for public institutions of higher learning,~~
40 ~~and for technical college delivery contracts authorized by the State~~
41 ~~Board for Technical and Comprehensive Education, the individual~~
42 ~~and total contract limits shall be fifty thousand and one hundred fifty~~
43 ~~thousand dollars, respectively.”~~

1
2 SECTION 50. Article 10, Chapter 35, Title 11 of the 1976 Code
3 is amended by adding:

4
5 “Section 11-35-3320. (A) The term ‘task order contract’ means
6 a contract that does not procure or specify a firm quantity of
7 services, other than a minimum or maximum quantity, and that
8 provides for the issuance of task orders for the performance of tasks
9 during the period of the contract. Subject to the requirements of this
10 section and other applicable law, a governmental body may enter
11 into task order contracts to acquire construction services when the
12 exact time or exact quantities of future tasks are not known at the
13 time of contract award. In accordance with Section 11-35-4810, the
14 State Engineer may award task order contracts on behalf of any
15 governmental body and for use by any state public procurement unit
16 authorized by the State Engineer.

17 (B) At any given time, a governmental body may enter into task
18 order contracts with four businesses for each geographic area for
19 each licensing classification and subclassification for construction.
20 Licensing classification and subclassification has the meaning
21 provided by Chapter 11, Title 40. Except as otherwise provided in
22 this section, a task order contract for construction must be procured
23 as provided in Section 11-35-1530, not including paragraph (4)
24 (Request for Qualifications) or paragraph (8) (Negotiations). All
25 evaluations must be conducted by a panel composed of at least three
26 members. A governmental body shall invite the State Engineer or
27 his designee to serve as one of the panel members. Except as
28 provided by regulation, award must be made to the four responsible
29 offerors whose proposals are determined in writing to be the most
30 advantageous to the State, taking into consideration the evaluation
31 factors set forth in the request for proposals. The contract file must
32 contain the basis on which the awards will be made and must be
33 sufficient to satisfy external audit. Procedures and requirements for
34 the notification of intent to award the contracts must be the same as
35 those provided in Section 11-35-1520(1) (Award). Section
36 11-35-3023 does not apply to contracts awarded pursuant to this
37 section.

38 (C) Limitations on task order contracts.

39 (1) A task order contract awarded for geographic area may not
40 be used to perform services at a different geographic area.

41 (2) A task order contract may not exceed five years, including
42 extensions.

1 (3) Total expenditures pursuant to all task order contracts for
2 construction resulting from a single solicitation may not exceed four
3 million dollars.

4 (4) The total construction cost of a single project performed
5 using multiple task orders or task orders in combination with other
6 types of contracts may not exceed five hundred thousand dollars.
7 Projects may not be divided artificially to avoid this limitation.

8 (5) A single project must not be performed using task order
9 contracts for construction in combination with contracts awarded
10 pursuant to Section 11-35-1550. Standards for determining whether
11 work constitutes a single project must be established in the Manual
12 for Planning and Execution of State Permanent Improvements.

13 (D) Limitations on task orders.

14 (1) A task order must clearly specify all tasks to be performed
15 or property to be delivered under the order so the full price for the
16 performance of the work can be established when the order is
17 placed. All task orders must be issued on a fixed-price basis.

18 (2) A quote request for construction must be provided to all
19 task order contractors. A task order for construction may not be
20 issued unless the governmental body receives at least two
21 responsive, bona fide, fixed-price quotes. Any award must be issued
22 to the contractor submitting the lowest responsive quote.

23 (3) All task orders must be issued within the period of the
24 contract and must be within the scope and maximum value of the
25 contract.

26 (4) A task order for construction may not be less than ninety
27 thousand dollars and may not exceed three hundred fifty thousand
28 dollars. Work may not be aggregated or divided artificially in order
29 to avoid these limits.

30 (E) Any solicitation for a task order contract must include the
31 following:

32 (1) the period of the contract, including the number of options
33 to extend the contract and the period for which the contract may be
34 extended under each option, if any;

35 (2) the maximum dollar value of the services to be procured
36 under the contract;

37 (3) the minimum and maximum dollar value of the services
38 to be procured under a single task order;

39 (4) a description that reasonably describes the licensing
40 classification and the general scope, nature, complexity, and
41 purposes of the services to be procured under the contract in a
42 manner that will enable a prospective offeror to decide whether to
43 submit an offer;

1 (5) the procedures that the governmental body will use for
2 requesting fixed price quotes and for issuing orders, a restriction on
3 communications between contractors regarding pending quote
4 requests, and a requirement that all contractors must respond to all
5 quote requests;

6 (6) the geographic area to which the task order contract
7 applies. Ordinarily, a geographically contiguous area should not be
8 subdivided; and

9 (7) the number of task order contracts to be awarded.

10 (F) Every award of a task order contract must be approved by
11 the Office of the State Engineer and is subject to procedures or
12 guidelines established in Manual for Planning and Execution of
13 State Permanent Improvements. A governmental body shall submit
14 to the Office of the State Engineer any reports required by the
15 Manual for Planning and Execution of State Permanent
16 Improvements.

17 (G) Administrative review under Article 17 is not available for
18 the award of an individual task order, except for a protest of the
19 award of a task order on the ground that the order increases the
20 scope, period, or maximum value of the task order contract under
21 which the order is issued.”

22
23 SECTION 51.A. Section 11-35-3410(1)(a) of the 1976 Code is
24 amended to read:

25
26 “(a) the unilateral right of a governmental body to order in
27 writing changes in the work within the general scope of the contract
28 and temporary stopping of the work or delaying performance; and”

29
30 B. Section 11-35-3410(2)(a)(vi) of the 1976 Code is amended to
31 read:

32
33 “(vi) in the absence of agreement by the parties, through unilateral
34 determination by the governmental body of the costs attributable to
35 the events or situations under such clauses, with adjustment of profit
36 or fee, all as computed by the governmental body in accordance with
37 applicable sections of the regulations issued under Article 13 of this
38 chapter, if any, and subject to the provisions of Article 17 of this
39 chapter.”

40
41 SECTION 52. Section 11-35-3820 of the 1976 Code is amended
42 to read:

43

1 “Section 11-35-3820. Except as provided in ~~Section 11-35-1580~~
2 ~~and~~ Section 11-35-3830 and the regulations pursuant to ~~them~~
3 ~~thereto~~, the sale of all state-owned supplies, or personal property not
4 in actual public use must be conducted and directed by the ~~Division~~
5 ~~of General Services of the~~ Department of Administration. The sales
6 must be held at such places and in a manner as in the judgment of
7 the ~~Division of General Services~~ department is most advantageous
8 to the State. Unless otherwise determined, sales must be by either
9 public auction or competitive sealed bid to the highest bidder. Each
10 governmental body shall inventory and report to the division all
11 surplus personal property not in actual public use held by that
12 governmental body for sale. The ~~division~~ department shall deposit
13 the proceeds from the sales, less expense of the sales, in the state
14 general fund or as otherwise directed by regulation. This policy and
15 procedure applies to all governmental bodies unless exempt by
16 law.”

17

18 SECTION 53. Section 11-35-3830(2) and (3) of the 1976 Code is
19 amended to read:

20

21 “(2) Approval of Trade-in Sales. When the trade-in value of
22 personal property of a governmental body exceeds the specified
23 amount, the ~~board~~ Department of Administration shall have the
24 authority to determine whether:

25 (a) the subject personal property shall be traded in and the
26 value applied to the purchase of new like items; or

27 (b) the property shall be classified as surplus and sold in
28 accordance with the provisions of Section 11-35-3820. The ~~board’s~~
29 department’s determination shall be in writing and be subject to the
30 provisions of this chapter.

31 (3) Record of Trade-in Sales. Governmental bodies shall submit
32 quarterly to the ~~materials management officer~~ Division of
33 Procurement Services a record listing all trade-in sales made under
34 subsections (1) and (2) of this section, including any applicable
35 written determinations.”

36

37 SECTION 54. Section 11-35-3840 of the 1976 Code is amended
38 to read:

39

40 “Section 11-35-3840. The Division of Procurement Services may
41 license for public sale publications, including South Carolina
42 Business Opportunities, materials pertaining to training programs,
43 and information technology products that are developed during the

1 normal course of its activities. The items must be licensed at
2 reasonable costs established in accordance with the cost of the items.
3 All proceeds from the sale of the publications and materials must be
4 ~~placed in a revenue account and expended for the cost of providing~~
5 ~~the services deposited in the state treasury in a special account and~~
6 ~~expended only for the costs of providing the goods and services, and~~
7 ~~such funds may be retained and expended for the same purposes.”~~
8

9 SECTION 55. Section 11-35-3850 of the 1976 Code is amended
10 to read:

11
12 “Section 11-35-3850. Governmental bodies approved by the
13 ~~board~~ Department of Administration may sell any supplies owned
14 by it after the supplies have become entirely unserviceable and can
15 properly be classified as ‘junk’, in accordance with procedures
16 established by the ~~designated board office~~ department. All sales of
17 unserviceable supplies by the governmental body must be made in
18 public to the highest bidder, after advertising for fifteen days, and
19 the funds from the sales must be credited to the account of the
20 governmental body owning and disposing of the unserviceable
21 supplies.”
22

23 SECTION 56. Section 11-35-4210(1), (2), (3), and (7) of the 1976
24 Code is amended to read:

25 “(1) ~~Right to Protest; Exclusive Remedy.~~

26 (a) A prospective bidder, offeror, contractor, or subcontractor
27 who is aggrieved in connection with ~~the a solicitation of a contract~~
28 shall protest to the appropriate chief procurement officer in the
29 manner stated in subsection (2)~~(a)~~ within fifteen days of the date of
30 issuance of the Invitation For Bids ~~or Requests~~ Request for
31 Proposals or other solicitation documents, whichever is applicable,
32 or any amendment to it, if the amendment is at issue. An Invitation
33 for Bids or ~~Request~~ Requests for Proposals or other solicitation
34 document, not including an amendment to it, is considered to have
35 been issued on the date required notice of the issuance is given in
36 accordance with this code.

37 (b) Any actual bidder, offeror, contractor, or subcontractor
38 who is aggrieved in connection with the intended award or award of
39 a contract shall notify the appropriate chief procurement officer in
40 writing of its intent to protest within seven business days of the date
41 that award or notification of intent to award, whichever is earlier, is
42 posted and sent in accordance with this code. Any actual bidder,
43 offeror, contractor, or subcontractor who is aggrieved in connection

1 with the intended award or award of a contract and has timely
2 notified the appropriate chief procurement officer of its intent to
3 protest, may protest to the appropriate chief procurement officer in
4 the manner stated in subsection (2)(b) within ten fifteen days of the
5 date award or notification of intent to award, whichever is earlier, is
6 posted and sent in accordance with this code; except that a matter
7 that could have been raised pursuant to subitem (a) as a protest of
8 the solicitation may not be raised as a protest of the award or
9 intended award of a contract.

10 (c) ~~The rights and remedies granted in this article to bidders,~~
11 ~~offerors, contractors, or subcontractors, either actual or prospective,~~
12 ~~are to the exclusion of all other rights and remedies of the bidders,~~
13 ~~offerors, contractors, or subcontractors against the State~~ Any actual
14 or prospective bidder, offeror, contractor, or subcontractor who is
15 aggrieved in connection with the intended award or award of a
16 contract pursuant to Section 11-35-1560 or Section 11-35-1570
17 shall notify the appropriate chief procurement officer in writing of
18 its intent to protest within five business days of the date that award
19 or notification of intent to award, whichever is earlier, is posted in
20 accordance with this code. Any actual or prospective bidder, offeror,
21 contractor, or subcontractor who is aggrieved in connection with the
22 intended award or award of such a contract and has timely notified
23 the appropriate chief procurement officer of its intent to protest, may
24 protest to the appropriate chief procurement officer in the manner
25 stated in subsection (2) within fifteen days of the date award or
26 notification of intent to award, whichever is earlier, is posted in
27 accordance with this code; except that a matter that could have been
28 raised pursuant to subitem (a) as a protest of the solicitation may not
29 be raised as a protest of the award or intended award of a contract.

30 (d) The rights and remedies granted by subsection (1) and
31 Section 11-35-4410(1)(b) are not available for contracts with an
32 actual or potential value of up to fifty thousand dollars.

33 (2) Protest Procedure. ~~(a)~~ A protest pursuant to subsection (1)~~(a)~~
34 must be in writing, filed with the appropriate chief procurement
35 officer, and set forth the grounds of the protest and the relief
36 requested with enough particularity to give notice of the issues to be
37 decided. The protest must be received by the appropriate chief
38 procurement officer within the time provided in subsection (1).

39 ~~(b) A protest pursuant to subsection (1)(b) must be in writing~~
40 ~~and must be received by the appropriate chief procurement officer~~
41 ~~within the time limits established by subsection (1)(b). At any time~~
42 ~~after filing a protest, but no later than fifteen days after the date~~
43 ~~award or notification of intent to award, whichever is earlier, is~~

1 ~~posted in accordance with this code, a protestant may amend a~~
2 ~~protest that was first submitted within the time limits established by~~
3 ~~subsection (1)(b). A protest, including amendments, must set forth~~
4 ~~both the grounds of the protest and the relief requested with enough~~
5 ~~particularity to give notice of the issues to be decided.~~

6 (3) Duty and Authority to Attempt to Settle Protests. Before
7 commencement of an administrative review as provided in
8 subsection (4), the appropriate chief procurement officer, the head
9 of the purchasing agency, or their designees may attempt to settle
10 by mutual agreement a protest of an aggrieved bidder, offeror,
11 contractor, or subcontractor, actual or prospective, concerning the
12 solicitation or award of the contract. The appropriate chief
13 procurement officer, ~~or his designee~~ has the authority to approve
14 any settlement reached by mutual agreement.

15 (7) Automatic Stay of Procurement During Protests. In the event
16 of a timely protest pursuant to subsection (1), the State shall not
17 proceed further with the solicitation or award of the contract until
18 ten days after a decision is posted by the appropriate chief
19 procurement officer, or, in the event of timely appeal to the
20 Procurement Review Panel, until a decision is rendered by the panel
21 except that solicitation or award of a protested contract is not stayed
22 if the appropriate chief procurement officer, after consultation with
23 the head of the using agency, makes a written determination that the
24 solicitation or award of the contract without further delay is
25 necessary to protect the ~~best interests~~ interest of the State.”

26
27 SECTION 57. Section 11-35-4215 of the 1976 Code is amended
28 to read:

29
30 “Section 11-35-4215. The agency may request that the
31 appropriate chief procurement officer require any bidder or offeror
32 who files an action protesting the intended award or award of a
33 contract solicited under Article 5 of this code and valued at one
34 million dollars or more to post with the appropriate chief
35 procurement officer a bond or irrevocable letter of credit payable to
36 the State of South Carolina in an amount equal to one percent of the
37 total potential value of the contract as determined by the appropriate
38 chief procurement officer. The chief procurement officer’s decision
39 to require a bond or irrevocable letter of credit is not appealable
40 under ~~Section 11-35-4214~~ Article 17. The bond or irrevocable letter
41 of credit shall be conditioned upon the payment of all reasonable
42 reimbursement costs which may be adjudged against the bidder or
43 offeror filing the protest in the administrative hearing in which the

1 action is brought and in any subsequent appellate court proceeding.
2 For protests of ~~intended award or award of a contract of the~~
3 ~~purchasing agency's request for~~ sole source or emergency
4 procurements, the bond or irrevocable letter of credit shall be in an
5 amount equal to one percent of the requesting agency's estimate of
6 the contract amount for the sole source or emergency procurement
7 requested. In lieu of a bond or irrevocable letter of credit, the
8 appropriate chief procurement officer may accept a cashier's check
9 or money order in the amount of the bond or irrevocable letter of
10 credit. If, after completion of the administrative hearing process and
11 any appellate court proceedings, the agency prevails, it may request
12 that the Procurement Review Panel allow it to recover all reasonable
13 reimbursement costs and charges associated with the protest which
14 shall be included in the final order or judgment, excluding attorney's
15 fees. Upon payment of such costs and charges by the bidder or
16 offeror protesting the intended award or award of a contract, the
17 bond, irrevocable letter of credit, cashier's check, or money order
18 shall be returned to the bidder or offeror. Failure to pay such costs
19 and charges by the bidder or offeror protesting the intended award
20 or award of a contract shall result in the forfeiture of the bond,
21 irrevocable letter of credit, cashier's check, or money order to the
22 extent necessary to cover the payment of all reasonable
23 reimbursement costs adjudged against the protesting bidder or
24 offeror. If the bidder or offeror prevails in the protest, the cost of
25 providing the bond, irrevocable letter of credit or cashier's check
26 may be sought from the agency requesting the bond or irrevocable
27 letter of credit; provided that in no event may the amount recovered
28 exceed fifteen thousand dollars."

29

30 SECTION 58. Section 11-35-4220 of the 1976 Code is amended
31 to read:

32

33 "Section 11-35-4220. (1) Authority. After reasonable notice to
34 the person or firm involved, and a reasonable opportunity for that
35 person or firm to be heard, the appropriate chief procurement officer
36 has the authority to debar a person for cause from consideration for
37 award of contracts or subcontracts ~~if doing so is in the best interest~~
38 ~~of the State and there is probable cause for debarment.~~ The
39 appropriate chief procurement officer ~~also may~~ has authority to
40 suspend a person or firm from consideration for award of contracts
41 or subcontracts during an investigation ~~where~~ if there is probable
42 cause for debarment. The period of debarment or suspension is as
43 prescribed by the appropriate chief procurement officer.

1 (2) Causes for Debarment or Suspension. The causes for
2 debarment or suspension shall include, but not be limited to:

3 (a) conviction for commission of a criminal offense as an
4 incident to obtaining or attempting to obtain a public or private
5 contract or subcontract, or in the performance of the contract or
6 subcontract;

7 (b) conviction under state or federal statutes of
8 embezzlement, theft, forgery, bribery, falsification or destruction of
9 records, receiving stolen property, or another offense indicating a
10 lack of business integrity or professional honesty which currently,
11 seriously, and directly affects responsibility as a state contractor;

12 (c) conviction under state or federal antitrust laws arising out
13 of the submission of bids or proposals;

14 (d) violation of contract provisions, as set forth below, of a
15 character regarded by the appropriate chief procurement officer to
16 be so serious as to justify debarment action:

17 (i) deliberate failure without good cause to perform in
18 accordance with the specifications or within the time limit provided
19 in the contract; or

20 (ii) a recent record of failure to perform or of unsatisfactory
21 performance in accordance with the terms of one or more contracts;
22 except, that failure to perform or unsatisfactory performance caused
23 by acts beyond the control of the contractor must not be considered
24 a basis for debarment;

25 (e) violation of an order of a chief procurement officer or the
26 Procurement Review Panel; and

27 (f) violation of the Ethics, Government Accountability, and
28 Campaign Reform Act of 1991, as amended, as determined by the
29 State Ethics Commission, as an incident to obtaining or attempting
30 to obtain a public contract or subcontract, or in the performance of
31 the contract, or subcontract; and

32 (g) any other cause the appropriate chief procurement officer
33 determines to be so serious and compelling as to affect
34 responsibility as a state contractor or subcontractor, including
35 debarment by another governmental entity for any cause listed in
36 this subsection.

37 (3) Decision. The appropriate chief procurement officer shall
38 issue a written decision to debar or suspend within ten days of the
39 completion of his administrative review of the matter. The decision
40 must state the action taken, the specific reasons for it, and the period
41 of debarment or suspension, if any.

42 (4) Notice of Decision. A copy of the decision pursuant to
43 subsection (3) and a statement of appeal rights pursuant to Section

1 11-35-4220(5) must be mailed or otherwise furnished immediately
2 to the debarred or suspended person and any other party intervening.
3 The appropriate chief procurement officer also shall post a copy of
4 the decision at a time and place communicated to all parties
5 participating in the administrative review and the posted decision
6 must indicate the date of posting on its face and shall be
7 accompanied by a statement of the right to appeal provided in
8 Section 11-35-4220(5).

9 (5) Finality of Decision. A decision pursuant to subsection (3) is
10 final and conclusive, unless fraudulent or unless the debarred or
11 suspended person requests further administrative review by the
12 Procurement Review Panel pursuant to Section 11-35-4410(1),
13 within ten days of the posting of the decision in accordance with
14 Section 11-35-4220(4). The request for review must be directed to
15 the appropriate chief procurement officer, who shall forward the
16 request to the panel, or to the Procurement Review Panel, and must
17 be in writing, setting forth the reasons why the person disagrees with
18 the decision of the appropriate chief procurement officer. The
19 person also may request a hearing before the Procurement Review
20 Panel. The appropriate chief procurement officer and any affected
21 governmental body must have the opportunity to participate fully in
22 any review or appeal, administrative or legal.

23 (6) Debarment constitutes debarment of all divisions or other
24 organizational elements of the contractor, unless the debarment
25 decision is limited by its terms to specific divisions, organization
26 elements, or commodities. The debarring official may extend the
27 debarment decision to include any principals and affiliates of the
28 contractor if they are specifically named and given written notice of
29 the proposed debarment and an opportunity to respond. For
30 purposes of this section, business concerns, organizations, or
31 individuals are affiliates of each other if, directly or indirectly, either
32 one controls or has the power to control the other, or a third party
33 controls or has the power to control both. Indications of control
34 include, but are not limited to, interlocking management or
35 ownership, identity of interests among family members, shared
36 facilities and equipment, common use of employees, or a business
37 entity organized following the debarment, suspension, or proposed
38 debarment of a contractor which has the same or similar
39 management, ownership, or principal employees as the contractor
40 that was debarred, suspended, or proposed for debarment. For
41 purposes of this section, the term "principals" means officers,
42 directors, owners, partners, and persons having primary
43 management or supervisory responsibilities within a business entity

1 including, but not limited to, a general manager, plant manager,
2 head of a subsidiary, division, or business segment, and similar
3 positions.

4 (7)(a) The fraudulent, criminal, or other seriously improper
5 conduct of any officer, director, shareholder, partner, employee, or
6 other individual associated with a contractor may be imputed to the
7 contractor when the conduct occurred in connection with the
8 individual's performance of duties for or on behalf of the contractor,
9 or with the contractor's knowledge, approval, or acquiescence. The
10 contractor's acceptance of the benefits derived from the conduct is
11 evidence of such knowledge, approval, or acquiescence.

12 (b) The fraudulent, criminal, or other seriously improper
13 conduct of a contractor may be imputed to any officer, director,
14 shareholder, partner, employee, or other individual associated with
15 the contractor who participated in, knew of, or had reason to know
16 of the contractor's conduct.

17 (c) The fraudulent, criminal, or other seriously improper
18 conduct of one contractor participating in a joint venture or similar
19 arrangement may be imputed to other participating contractors if the
20 conduct occurred for or on behalf of the joint venture or similar
21 arrangement, or with the knowledge, approval, or acquiescence of
22 these contractors. Acceptance of the benefits derived from the
23 conduct is evidence of such knowledge, approval, or acquiescence.

24 (8) The chief procurement officers shall maintain and update a
25 list of debarred and suspended persons, and shall make the list
26 publicly available."

27
28 SECTION 59. Section 11-35-4230(1) and (2) of the 1976 Code is
29 amended to read:

30
31 "(1) Applicability. This section applies to controversies between
32 a governmental body and a contractor or subcontractor, when the
33 subcontractor is the real party in interest, which arise under or by
34 virtue of a contract between them including, but not limited to,
35 controversies based upon breach of contract, mistake,
36 misrepresentation, or other cause for contract modification or
37 ~~recession~~ rescission. The procedure set forth in this section
38 constitutes the exclusive means of resolving a controversy between
39 a governmental body and a contractor or subcontractor, when the
40 subcontractor is the real party in interest, concerning a contract
41 ~~solicited and awarded pursuant to~~ governed by the provisions of the
42 South Carolina Consolidated Procurement Code. On behalf of any
43 governmental body or South Carolina public procurement unit that

1 participates in a multiagency, term, or cooperative contract awarded
2 by or under the authority of a chief procurement officer, the Division
3 of Procurement Services may initiate and pursue resolution of any
4 contract controversy which arises under or by virtue of a contract
5 between them including, but not limited to, controversies based
6 upon breach of contract, mistake, misrepresentation, or other cause
7 for contract modification or rescission.

8 (2) Request for Resolution; Time for Filing. Either the
9 contracting state agency or the contractor or subcontractor, when the
10 subcontractor is the real party in interest, may initiate resolution
11 proceedings before the appropriate chief procurement officer by
12 submitting a request for resolution to the appropriate chief
13 procurement officer in writing setting forth the specific nature of the
14 controversy and the specific relief requested with enough
15 particularity to give notice of every issue to be decided. A request
16 for resolution of contract controversy must be filed within one year
17 ~~of~~ after the date the contractor last performs work under the contract
18 or within one year after the claim accrues, whichever is later; except
19 that in the case of latent defects a request for resolution of a contract
20 controversy must be filed within three years of the date the
21 requesting party first knows or should know of the grounds giving
22 rise to the request for resolution.”

23
24 SECTION 60. Section 11-35-4310(1) and (3) of the 1976 Code is
25 amended to read:

26
27 “(1) Applicability. The provisions of this section apply where it
28 is determined by either the appropriate chief procurement officer or
29 the Procurement Review Panel, upon administrative review, that a
30 solicitation or award of a contract is in violation of the law. The
31 remedies set forth herein may be granted by either the appropriate
32 chief procurement officer, only after review under Section
33 11-35-4210, or by the Procurement Review Panel, only after review
34 under Section 11-35-4410(1).

35
36 (3) Remedies After Award. If, after an award of a contract, it is
37 determined that the solicitation or award is in violation of law;

38 (a) the contract may be ratified and affirmed, provided it is in
39 the ~~best interests~~ interest of the State; or

40 (b) the contract may be terminated and the payment of such
41 damages, if any, as may be provided in the contract, may be
42 awarded.”

43

1 SECTION 61. Subarticle 2, Article 17, Chapter 35, Title 11 of the
2 1976 Code is amended by adding:

3

4 “Section 11-35-4315. The board may provide by regulation for
5 appropriate action where it is discovered either: (a) that a person
6 lacking actual authority has made an unauthorized award or
7 modification of a contract, or (b) that a contract award or
8 modification is otherwise in violation of the Consolidated
9 Procurement Code or these regulations.”

10

11 SECTION 62. Subarticle 2, Article 17, Chapter 35, Title 11 of the
12 1976 Code is amended by adding:

13

14 “Section 11-35-4340. There is no remedy against the State other
15 than those provided in this chapter in any case involving a
16 procurement subject to this code. The rights and remedies granted
17 in this article are to the exclusion of all other rights and remedies
18 against the State for matters arising out of or related to this code.”

19

20 SECTION 63. Section 11-35-4410(6) of the 1976 Code is
21 amended to read:

22

23 “(6) Finality. Notwithstanding another provision of law,
24 including the Administrative Procedures Act, the decision of the
25 Procurement Review Panel is final as to administrative review and
26 may be appealed only to the ~~circuit court~~. ~~The standard of review is~~
27 ~~as provided by the provisions of the South Carolina Administrative~~
28 ~~Procedures Act.~~ court of appeals pursuant to Section 1-23-380, and
29 the filing of an appeal does not ~~automatically~~ stay a decision of the
30 panel.”

31

32 SECTION 64. Subarticle 3, Article 17, Chapter 35, Title 11 of the
33 1976 Code is amended by adding:

34

35 “Section 11-35-4425. If a final order of a chief procurement
36 officer or the Procurement Review Panel is not appealed in
37 accordance with the provisions of this code, upon request of a party
38 to the proceedings, the chief procurement officer or Procurement
39 Review Panel may file a certified copy of the final ruling with a
40 clerk of the circuit court, or a court of competent jurisdiction, as
41 requested. After filing, the certified ruling has the same effect as a
42 judgment of the court where filed and may be recorded, enforced, or
43 satisfied in the same manner as a judgment of that court.

1

2 Section 11-35-4430. Unless required for the disposition of ex
3 parte matters authorized by law, members or employees of the panel
4 assigned to render a decision or to make findings of fact and
5 conclusions of law in a matter pending before the panel shall not
6 communicate, directly or indirectly, in connection with any issue of
7 fact, with any person or party, nor, in connection with any issue of
8 law, with any party or his representative, except upon notice and
9 opportunity for all parties to participate. A panel member: (a) may
10 communicate with other members of the panel, and (b) may have
11 the aid and advice of one or more personal assistants. Any person
12 who violates the provisions of this section shall be deemed guilty of
13 a misdemeanor and upon conviction shall be fined not more than
14 two hundred fifty dollars or imprisoned for not more than six
15 months.”

16

17 SECTION 65. Section 11-35-4610 of the 1976 Code is amended
18 to read:

19

20 “Section 11-35-4610. As used in this article, unless the context
21 clearly indicates otherwise:

22 (1) ‘Cooperative purchasing’ means procurement conducted by,
23 or on behalf of, more than one public procurement unit, or by a
24 public procurement unit with an external procurement activity.

25 (2) ‘External procurement activity’ means:

26 (a) any buying organization not located in this State which, if
27 located in this State, would qualify as a public procurement unit;

28 (b) buying by the United States government.

29 (3) ‘Local public procurement unit’ means any political
30 subdivision or unit thereof of this State which expends public funds
31 for the procurement of supplies, services, information technology,
32 or construction.

33 (4) ‘Mandatory opting’ is the requirement for a local
34 procurement unit to choose whether to utilize a state contract before
35 it is established as prescribed in regulation by the board.

36 (5) ‘Public procurement unit’ means ~~either~~ any of the following:

37 (a) a local public procurement unit ~~or~~;

38 (b) a state public procurement unit;

39 (c) an external procurement activity; or

40 (d) any not-for-profit entity comprised only of more than one
41 activity or unit listed in subitems (a), (b), or (c), if and as approved
42 in writing by the Materials Management Officer.

1 (6) 'State public procurement unit' means the offices of the chief
2 procurement officers, ~~and any other~~ purchasing agency of this State,
3 and any other unit of South Carolina state government."

4
5 SECTION 66. Section 11-35-4810 of the 1976 Code is amended
6 to read:

7
8 "Section 11-35-4810. (1) Any public procurement unit may
9 participate in, sponsor, conduct, or administer a cooperative
10 purchasing agreement for the procurement of any supplies, services,
11 technology information, or construction with one or more public
12 procurement units ~~or external procurement activities~~ in accordance
13 with an agreement entered into between the participants. Such
14 cooperative purchasing may include, but is not limited to, joint or
15 multi-party contracts between public procurement units and
16 open-ended state public procurement unit contracts which shall be
17 made available to local public procurement units, except as provided
18 in Section 11-35-4820 or except as may otherwise be limited by the
19 ~~board through regulations~~ appropriate chief procurement officer.

20 (2) Without limiting other requirements of this code, all
21 cooperative purchasing with other states conducted under this article
22 must be through contracts awarded through full and open
23 competition, including use of source selection methods substantially
24 equivalent to those specified in Article 5 and, as applicable, Article
25 9 of this code, and consistent with the requirements of Section
26 11-35-2730 (Assuring Competition).

27 (3) The offices of the chief procurement officers, and any other
28 purchasing agency of this State, may participate in cooperative
29 purchasing as provided in Section 11-35-4810(1) only if the
30 appropriate chief procurement officer determines in writing: (i) that
31 participation is in the interest of the State, (ii) that the procurement
32 will conform to subsection (2), if applicable, and (iii) that any
33 entities responsible for the management and administration of the
34 procurement, other than another state's central procurement office,
35 have in place appropriate and adequate internal controls to provide
36 safeguards for the maintenance of a procurement system of quality
37 and integrity with clearly defined rules for ethical behavior on the
38 part of all persons engaged in the public procurement process. In
39 making his determination, the chief procurement officer shall
40 evaluate and consider the impact on South Carolina businesses.

41 (4) ~~However,~~ Thirty days' prior notice of a proposed multi-state
42 multistate solicitation must be provided through central advertising
43 and in accordance with Section 11-35-1520(3). Supplies acquired

1 ~~pursuant to~~ such contracts may be ~~only awarded to manufacturers~~
2 ~~who will be distributing the products to South Carolina~~
3 ~~governmental bodies distributed only~~ through South Carolina
4 vendors with an in-state office, as defined in Section
5 11-35-1524(A)(6), when available; provided, however, that the
6 provisions of this paragraph do not apply to public institutions of
7 higher learning if the institution demonstrates a cost savings to the
8 ~~Office of State Procurement~~ appropriate chief procurement officer
9 in regard to the ~~multi-state~~ multistate solicitation and procurement.”

10

11 SECTION 67. Section 11-35-4830 of the 1976 Code is amended
12 to read:

13

14 “Section 11-35-4830. Any public procurement unit may sell to,
15 acquire from, or use any supplies belonging to another public
16 procurement unit ~~or external procurement activity in accordance~~
17 with independent of the requirements of Articles 5 and 15 of this
18 chapter; provided, that such procurement shall take place only when
19 the procuring entities have good reason to expect the
20 intergovernmental procurement to be more cost effective than doing
21 their own procurement.”

22

23 SECTION 68. Section 11-35-4840 of the 1976 Code is amended
24 to read:

25

26 “Section 11-35-4840. Any public procurement unit may enter
27 into an agreement ~~in accordance with~~ independent of the
28 requirements of Articles 5 and 15 of this chapter with any other
29 public procurement unit ~~or external procurement activity~~ for the
30 cooperative use of supplies, ~~or services, or information technology~~
31 under the terms agreed upon between the parties; provided, that such
32 cooperative use of supplies, ~~or services, or information technology~~
33 shall take place only when the public procurement units have good
34 reason to expect the cooperative use to be more cost effective than
35 utilizing their own supplies and services.”

36

37 SECTION 69. Section 11-35-4860(3) and (5) of the 1976 Code is
38 amended to read:

39

40 “(3) State Information Services. Upon request, the chief
41 procurement officers may make available to public procurement
42 units or external procurement activities the following services
43 among others:

- 1 (a) standard forms;
- 2 (b) printed manuals;
- 3 (c) product specifications and standards;
- 4 (d) quality assurance testing services and methods;
- 5 (e) qualified product lists;
- 6 (f) source information;
- 7 (g) common use commodities listings;
- 8 (h) supplier prequalification information;
- 9 (i) supplier performance ratings;
- 10 (j) debarred and suspended bidders lists;
- 11 (k) forms for invitations for bids, requests for proposals,
- 12 instruction to bidders, general contract provisions and other contract
- 13 forms;
- 14 (l) ~~contracts; or published summaries thereof, including price~~
- 15 ~~and time of delivery information~~
- 16 (m) published summaries of contracts, including price and
- 17 time of delivery information.

18

19 (5) Fees. The chief procurement officers may enter into

20 contractual arrangements and publish a schedule of fees for the

21 services provided under subsections (3) and (4) of this section. All

22 proceeds from the sale of such services must be deposited in the

23 state treasury in a special account and expended only for the costs

24 of providing the goods and services, and such funds may be retained

25 and expended for the same purposes.”

26

27 SECTION 70. Section 11-35-4870 of the 1976 Code is amended

28 to read:

29

30 “Section 11-35-4870. All payments from any public procurement

31 unit or external procurement activity received by ~~a public~~

32 ~~procurement unit supplying personnel or services~~ the Division of

33 Procurement Services in connection with sponsoring or

34 administering a cooperative purchase, must be deposited in the state

35 treasury in a special account and expended only for the costs of

36 providing the goods and services, and such funds may be retained

37 and expended for the same purposes ~~shall be governed by any~~

38 ~~provisions of law concerning nonbudgeted revenue of the recipient~~

39 ~~entity.”~~

40

41 SECTION 71. Section 11-35-4880 of the 1976 Code is amended

42 to read:

43

1 “Section 11-35-4880. Where the public procurement unit ~~or~~
2 ~~external procurement activity~~ administering a cooperative purchase
3 complies with the requirements of this code, any public procurement
4 unit participating in such a purchase shall be deemed to have
5 complied with this code. Public procurement units shall not enter
6 into a cooperative purchasing agreement for the purpose of
7 circumventing this code.”

8

9 SECTION 72. Subarticle 3, Article 19, Chapter 35, Title 11 of the
10 1976 Code is amended by adding:

11

12 “Section 11-35-4900. Intergovernmental Acquisitions.

13 (1) Any procurement by a governmental body from any other
14 public procurement unit must be approved in advance of contracting
15 by the applicable chief procurement officer unless either the supply,
16 service, or information technology is expressly authorized by the
17 enabling legislation of the governmental body supplying the item,
18 or the board has exempted the type of procurement from such
19 approval. Upon recommendation of the division, the board may
20 establish criteria for approval. Absent approval, any procurement by
21 a governmental body from any other public procurement unit must
22 be in accordance with the other articles of this code.

23 (2) Any procurement by a governmental body from any other
24 public procurement unit must be reported to the Division of
25 Procurement Services quarterly. The division shall determine the
26 means and content of the information to be reported. The Division
27 shall report to the board annually on such procurements.”

28

29 SECTION 73. Section 1-23-600(D), as last amended by Act 134
30 of 2018, of the 1976 Code is further amended to read:

31

32 “(D) An administrative law judge also shall preside over all
33 appeals from final decisions of contested cases pursuant to the
34 Administrative Procedures Act, Article I, Section 22, Constitution
35 of the State of South Carolina, 1895, or another law, except that an
36 appeal from a final order of the Public Service Commission and the
37 State Ethics Commission is to the Supreme Court or the court of
38 appeals as provided in the South Carolina Appellate Court Rules, an
39 appeal from the Procurement Review Panel is to the ~~circuit~~ court of
40 appeals as provided in Section 11-35-4410, and an appeal from the
41 Workers’ Compensation Commission is to the court of appeals as
42 provided in Section 42-17-60. An administrative law judge shall not
43 hear an appeal from an inmate in the custody of the Department of

1 Corrections involving the loss of the opportunity to earn
2 sentence-related credits pursuant to Section 24-13-210(A) or
3 Section 24-13-230(A) or an appeal involving the denial of parole to
4 a potentially eligible inmate by the Department of Probation, Parole
5 and Pardon Services.”

6

7 SECTION 74. Section 57-1-490 of the 1976 code is amended to
8 read:

9

10 “Section 57-1-490. (A) The department shall be audited by a
11 certified public accountant or firm of certified public accountants
12 once each year to be designated by the State Auditor. The designated
13 accountant or firm of accountants shall issue audited financial
14 statements in accordance with generally accepted accounting
15 principles, and such financial statements must be made available
16 annually by October fifteenth to the General Assembly. The costs
17 and expenses of the audit must be paid by the department out of its
18 funds.

19 ~~(B) The Materials Management Office of the State Fiscal~~
20 ~~Accountability Authority annually must audit the department’s~~
21 ~~internal procurement operation to ensure that the department has~~
22 ~~acted properly with regard to the department’s exemptions~~
23 ~~contained in Section 11-35-710. The audit must be performed in~~
24 ~~accordance with applicable state law, including, but not limited to,~~
25 ~~administrative penalties for violations found as a result of the audit.~~
26 ~~The results of the audit must be made available by October fifteenth~~
27 ~~to the Department of Transportation Commission, the State Auditor,~~
28 ~~the Governor, the Chairmen of the Senate Finance and~~
29 ~~Transportation Committees, and the Chairmen of the House of~~
30 ~~Representatives Ways and Means and Education and Public Works~~
31 ~~Committees. The costs and expenses of the audit must be paid by~~
32 ~~the department out of its funds.~~

33 ~~(C)~~ The Legislative Audit Council shall contract for an
34 independent performance and compliance audit of the department’s
35 finance and administration division, mass transit division, and
36 construction engineering and planning division. This audit must be
37 completed by January 15, 2010. The Legislative Audit Council may
38 contract for follow-up audits or conduct follow-up audits as needed
39 based upon the audit’s initial findings. The costs of these audits,
40 including related administrative and management expenses of the
41 Legislative Audit Council, are an operating expense of the
42 department. The department shall pay directly to the Legislative
43 Audit Council the cost of the audits.

1 ~~(D)~~(C) Copies of every audit conducted pursuant to this section
2 must be made available to the Department of Transportation
3 Commission, the State Auditor, the Governor, the Chairmen of the
4 Senate Finance and Transportation Committees, and the Chairmen
5 of the House of Representatives Ways and Means and Education
6 and Public Works Committees.”

7
8 SECTION 75. Article 1, Chapter 11, Title 1 of the 1976 Code is
9 amended by adding:

10
11 “Section 1-11-190. The Department of Administration is
12 responsible for:

- 13 (a) assessing the need for and use of information technology;
- 14 (b) evaluating the use and management of information
15 technology;
- 16 (c) operating a comprehensive inventory and accounting
17 reporting system for information technology;
- 18 (d) developing policies and standards for the management of
19 information technology in state government;
- 20 (e) initiating a state plan for the management and use of
21 information technology;
- 22 (f) providing management and technical assistance to state
23 agencies in using information technology; and
- 24 (g) establishing a referral service for state agencies seeking
25 technical assistance or information technology services.”

26
27 SECTION 76. No later than the first Monday in September after
28 this act takes effect, the State Fiscal Accountability Authority shall
29 publish interim regulations it will follow to implement changes to
30 Chapter 35, Title 11 of the 1976 Code, as contained in this act. These
31 interim regulations must be used in implementing this act until such
32 time as the final rules and regulations are adopted in accordance
33 with this section and Chapter 23, Title 1. No later than the first
34 Monday in November after this act takes effect, the State Fiscal
35 Accountability Authority shall publish a draft of the proposed final
36 regulations it will follow to implement changes; provided, however,
37 the interim regulations are not subject to the provisions of Chapter
38 23, Title 1.

39
40 SECTION 77. Section 11-35-1580 of the 1976 Code is repealed.

41
42 SECTION 78. Article 10, Chapter 35, Title 11 of the 1976 Code
43 is redesignated as “Indefinite Quantity Contracts”.

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SECTION 79. Section 11-35-35 is recodified as Section 11-35-5310. Section 11-35-50 is recodified as Section 11-35-5320. Section 11-35-55 is recodified as Section 11-35-5330. Section 11-35-70 is recodified as Section 11-35-5340.

SECTION 80. This act takes effect upon approval by the Governor and applies to solicitations issued after that date.

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