S. 572

Introduced by Senators Leatherman and Setzler

Read the first time March 30, 2006.
A BILL

WITH THE TERMS "CHIEF PROCUREMENT OFFICER," "DESIGNATED BOARD OFFICE," OR "DESIGNATED BOARD OFFICER," AND TO PROVIDE, FURTHER THAT THE CHIEF EXECUTIVE OFFICER OF THE BUDGET AND CONTROL BOARD DESIGNATE THE APPROPRIATE OFFICE OR SUBDIVISION OF THE BOARD OR OFFICER OR POSITION OF THE BOARD; TO REPLACE REFERENCES OF PROCUREMENT REQUIREMENTS FOR "GOODS AND SERVICES" WITH "SUPPLIES, SERVICES, AND INFORMATION TECHNOLOGY," REFINE AND CONFORM VARIOUS COMPETITIVE BIDDING MODES, TO INCREASE MAXIMUM DOLLAR THRESHOLDS IN SEVERAL INSTANCES, TO REDUCE THE POTENTIAL BIDDERS TO BE RANKED IN CERTAIN CONSTRUCTION CONTRACTS FROM FIVE TO THREE, TO REDUCE THE CONTRACT AMOUNT ALLOWING WAIVER OF A BOND AND SECURITY, AND TO ADJUST SMALL PURCHASE THRESHOLDS AND AGENCY BASELINE CERTIFICATION; TO PROVIDE THAT A GOVERNMENTAL BODY HAVE A GOAL THAT TEN PERCENT OF ITS TOTAL DOLLAR AMOUNT OF PROCUREMENT FUNDS EXPENDED BE WITH A MINORITY BUSINESS ENTERPRISE AND TO INCREASE THE TAX CREDIT FOR DEALING WITH AN MBE TO FIFTY THOUSAND DOLLARS ANNUALLY OVER TEN YEARS; TO SHORTEN THE PROTEST DEADLINE; AND TO PROVIDE THAT THE CHIEF PROCUREMENT OFFICER AND AN AFFECTED GOVERNMENTAL BODY HAVE THE OPPORTUNITY TO PARTICIPATE FULLY IN A REVIEW OR APPEAL OF AN ADMINISTRATIVE OR LEGAL DECISION MADE PURSUANT TO THE PROCUREMENT CODE; TO AMEND SECTION 12-6-3350, RELATING TO TAX CREDITS FOR STATE CONTRACTORS AND SUBCONTRACTORS WITH MINORITY FIRMS, SO AS TO INCREASE THE CREDIT TO FIFTY THOUSAND DOLLARS ANNUALLY FOR TEN YEARS; AND TO REPEAL SUBARTICLE 11 OF ARTICLE 1, CHAPTER 35, TITLE 11 RELATING TO THE ACCEPTANCE OF GIFTS IN KIND OF ARCHITECTURAL AND ENGINEERING SERVICES BY A GOVERNMENTAL BODY; SECTION 11-35-1270, AS AMENDED, RELATING TO AUTHORITY TO CONTRACT FOR CERTAIN SERVICES, AND SUBARTICLE 5 OF ARTICLE 15, CHAPTER 35, TITLE
11 RELATING TO THE CONTINUATION OF CERTAIN PROVISIONS OF LAW.

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

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

“Section 11-35-25. If this code applies to a procurement, the provisions of this code supersede all laws or parts of laws in conflict with it to the extent of the conflict including, but not limited to, the principles of law and equity, the common law, and the Uniform Commercial Code of this State.”

SECTION 2. Subarticle 3, Article 15, Chapter 35, Title 11 of the 1976 Code, is amended by adding:

“Section 11-35-3850. Governmental bodies approved by the board may sell any supplies owned by it after such the supplies have become entirely unserviceable and can properly be classified as ‘junk’, in accordance with procedures established by the Office of General Services designated board office. All sales of unserviceable supplies by the governmental body shall must be made in public to the highest bidder, after advertising for fifteen days, and the funds from such the sales shall must be credited to the account of the governmental body owning and disposing of such the unserviceable supplies.”

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

“Section 11-35-4420. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully as a party in a matter pending before the Procurement Review Panel and in an appeal of a decision of the Procurement Review Panel, whether administrative or judicial.”

SECTION 4. Section 11-35-40(2) of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:
“(2) Application to State Procurement. This code shall apply to every procurement or expenditure of funds by this State under contract acting through a governmental body as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in Section 11-35-40(3) (Compliance with Federal Requirements) and except that this code does not apply to gifts, to the issuance of grants, or to contracts between public procurement units, except as provided in Article 19 (Intergovernmental Relations). It shall also apply to the disposal of state supplies as provided in Article 15 (Supply Management). The provisions of this code shall apply to all procurements of information technology elements by any governmental body, irrespective of the source funds whether appropriated or not.”

SECTION 5. Section 11-35-45(A) of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“(A) All vouchers for payment of purchases of goods or services, supplies, or information technology shall must be delivered to the Comptroller General’s office within thirty work days from acceptance of the goods or services and proper invoice. After the thirtieth work day, following acceptance or the postmark on the invoice, the Comptroller General shall levy an amount not to exceed fifteen percent per annum each year from the funds available to the agency, such this amount to be applied to the unpaid balance to be remitted to the vendor unless the vendor waives imposition of the interest penalty.”

SECTION 6. Section 11-35-210 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-210. Written determinations and findings expressly required by the code or regulations shall must be retained in an official contract file of the governmental body administering the contract. Such These determinations shall must be documented in sufficient detail to satisfy the requirements of audit as provided for in Section 11-35-1230.”

SECTION 7. Section 11-35-310(8), (17), (19), (20), (24), (28), (35), and (36) of the 1976 Code, as last amended by Act 356 of 2002, is further amended to read:
“(8) ‘Contract’ means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, information technology, or construction.

(17) ‘General Services’ means the Office of the Budget and Control Board. (Reserved)

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

(20) ‘Invitation for bids’ means a written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of stated supplies, services, information technology, or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

(24) ‘Procurement’ means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, information technology, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, solicitation of sources, preparation and award of contracts, and all phases of contract administration.

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

(35) ‘Term contract’ means a contract established by the chief procurement officer for a specific product or service supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements for the goods and services during its term. If a governmental body is offered goods and services at a price that is at least ten percent less than the term contract price for the same goods or services, the governmental body may procure the goods and services from the supplier at the lower price.
services, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body must shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multi-term contract as provided in Section 11-35-2030.

(36) ‘Using agency’ means any governmental body of the State which utilizes any supplies, services, information technology, or construction purchased under this code.”

SECTION 8. Section 11-35-310 of the 1976 Code, as last amended by Act 356 of 2002, is further amended by adding:

“(37) ‘Designated board office’ and ‘Designated board officer’ means the office or officer designated in accordance with Section 11-35-540(5).”

SECTION 9. Section 11-35-410 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-410. (A) Procurement information shall must be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act) with the exception that commercial or financial information obtained in response to a ‘request for proposals’ or any type of bid solicitation which that is privileged and confidential need not be disclosed.

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

1. customer lists;
2. design recommendations and identification of prospective problem areas under an RFP;
3. design concepts, including methods and procedures;
4. biographical data on key employees of the bidder.
For all documents submitted in response or with regard to a solicitation or other request, the documents need not be disclosed if an award is not made.

Evaluative documents predeci sional in nature such as inter-agency or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter-agency or intra-agency memoranda reflecting the predecisional deliberations.

At the time of submitting a proposal or bid, the party supplying a bid or proposal must identify any portions of the proposal or bid considered by the party to be a trade secret and thus eligible to be withheld from public inspection and copying. If the information identified by the party is a trade secret, as defined in Section 30-4-40(a)(1), it may be withheld from public inspection and copying. If the party fails to identify information as a trade secret, the entire bid or proposal is to be made available for public inspection and copying. For all documents submitted in response or with regard to any solicitation or other request, the person submitting the documents shall comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public.”

SECTION 10. The first paragraph of Section 11-35-450(A) of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“The purchase of furniture, floor coverings, wall coverings, or any other decorative or ornamental item by a governmental body for at least one of the following uses must be reported to the governing board, commission, or council of the respective governmental body before the purchase, when the cost of the furniture, covering, or item exceeds five hundred one thousand dollars, before the purchase and it is to be used in:

1. an office or adjoining reception area utilized by an agency director or assistant agency director; or
2. a board room or a conference room used as a board room.”

SECTION 11. Section 11-35-510 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:
“Section 11-35-510. All rights, powers, duties, and authority relating to the procurement of supplies, services, and information technology and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services now vested in or exercised by any state governmental body under pursuant to the provisions of law relating thereto, and regardless of source of funding, are hereby vested in the Office of General Services appropriate chief procurement officer. This vesting of authority shall be is subject to Sections 11-35-710 (Exemptions), 11-35-1250 (Authority to Contract for Auditing Services), 11-35-1260 (Authority to Contract for Legal Services), 11-35-1270 (Authority to Contract for Certain Services), Section 11-35-1550 (Small Purchases), Section 11-35-1570 (Emergency Procurements), 11-35-3230 (Exception for Small Architect-Engineer, and Land Surveying Services Contracts), and Section 11-35-3620 (Management of Warehouses and Inventory).”

SECTION 12. Section 11-35-540 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-540. (1) Authority to Promulgate Regulations. Except as otherwise provided in this code, the board shall have the authority and responsibility to may promulgate regulations, consistent with this code, governing the procurement, management, control, and disposal of any all supplies, services, information technology, and construction to be procured by the State. Such These regulations shall be are binding in all procurements made by the State.

(2) Nondelegation. The board shall may not delegate its power to promulgate regulations.

(3) Approval of Operational Procedures. Governmental bodies shall be authorized to develop internal operational procedures consistent with this code; provided except, that such the operational procedures shall must be certified approved in writing by the appropriate chief procurement officer as being consistent with this chapter. The operational procedures must be consistent with this chapter. Operational procedures adopted pursuant to this chapter are exempt from the requirements of Section 1-23-140.

(4) The board as a whole or acting through its procurement policy committee shall consider and decide matters of policy within the provisions of this code including those referred to it by the chief procurement officers. The board shall have has the
power to audit and monitor the implementation of its regulations
and the requirements of this code.

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

SECTION 13. Section 11-35-710 of the 1976 Code, as last
amended by Act 264 of 2000, is further amended to read:

“Section 11-35-710. The board, upon the recommendation of
the Office of General Services designated board office, may
exempt governmental bodies from purchasing certain items
through the respective chief procurement officer’s area of
responsibility. The board may exempt specific supplies, or
services, information technology, or construction from the
purchasing procedures required in this section chapter and for just
cause by unanimous written decision limit or may withdraw
exemptions provided for in this section. The following exemptions
are granted in from this chapter:
(1) the construction, maintenance, and repair of bridges,
highways, and roads; vehicle and road equipment maintenance
and repair; and any other emergency-type emergency-type parts or
equipment utilized by the Department of Transportation or the
Department of Public Safety;
(2) the purchase of raw materials by the South Carolina
Department of Corrections, Division of Prison Industries;
(3) S.C. South Carolina State Ports Authority;
(4) Division of Public Railways of the Department of
Commerce;
(5) S.C. South Carolina Public Service Authority;
(6) expenditure of funds at state institutions of higher
learning derived wholly from athletic or other student contests,
from the activities of student organizations, and from the operation
of canteens and bookstores, except as the funds are used for the
procurement of construction, architect-engineer,
construction-management, and land surveying services;
(7) livestock, feed, and veterinary supplies;
(8) articles for commercial sale by all governmental bodies;
(9) fresh fruits, vegetables, meats, fish, milk, and eggs;
(10) South Carolina Arts Commission and South Carolina Museum Commission for the purchase of one-of-a-kind items such as paintings, antiques, sculpture, and similar objects. Before any governmental body procures the objects, the head of the purchasing agency shall prepare a written determination specifying the need for the objects and the benefits to the State. The South Carolina Arts Commission shall review the determination and forward a recommendation to the board for approval;
(11) published books, periodicals, and technical pamphlets;
(12) South Carolina Research Authority;
(13) the purchase of goods, products, and services supplied, services, or information technology by state offices, departments, institutions, agencies, boards, and commissions or the political subdivisions of this State from the South Carolina Department of Corrections, Division of Prison Industries;
(14) Medical University Hospital Authority, provided if the Medical University Hospital Authority has promulgated a procurement process in accordance with its enabling provision.”

SECTION 14. Section 11-35-810 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-810. There is hereby created, within the Office of General Services board, a Materials Management Office to be headed by the Materials Management Officer.”

SECTION 15. Section 11-35-820 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-820. There is hereby created within the Office of General Services board, the Information Technology Management Office to be headed by the Information Technology Management Officer. All procurements involving information technology, and any pre-procurement and post-procurement activities in this area, shall be conducted in accordance with the regulations promulgated by the board, except as otherwise provided for in this code by specific reference to the Information Technology Management Office.”
SECTION 16. Section 11-35-830 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-830. There is hereby created within the Office of General Services board, the State Engineer’s Office to be headed by the State Engineer. All procurements involving construction, architectural and engineering, construction management, and land surveying services, as defined in Section 11-35-2910, and any pre-procurement and post-procurement activities in this area, shall must be conducted in accordance with the ‘Manual for Planning and Execution of State Permanent Improvements’ and with any regulations promulgated by the board, except as unless otherwise provided for in this code by specific reference to the State Engineer’s Office.”

SECTION 17. Section 11-35-845 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-845. Each agency of state government that has total management capability as defined and certified by the Office of General Services shall State Engineer’s Office must be allowed to oversee the administration of permanent improvement construction projects with the State Engineer’s Office serving as an audit function. The State Engineer’s Office shall assist those small agencies who do not have the necessary expertise in permanent improvements.”

SECTION 18. Section 11-35-1030 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-1030. The Office of General Services chief procurement officers shall develop a system of training for procurement in accordance with regulations by the board. Such The training shall must encompass the latest techniques and methods of public procurement. If deemed considered appropriate by the Office of General Services chief procurement officers, such the training shall must include a requirement for the certification of the procurement officer of each purchasing agency.”

SECTION 19. Section 11-35-1210(1) of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

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“(1) Authority. The board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Office of General Services designated board office shall review the respective governmental body’s internal procurement operation, shall certify in writing that it is consistent with the provisions of this code and the ensuing regulations, and recommend to the board those dollar limits for the respective governmental body’s procurement not under term contract.”

SECTION 20. Section 11-35-1220 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-1220. The Office of General Services shall chief procurement officers are authorized to prepare statistical data concerning the procurement, use, and disposition of all supplies, services, information technology, and construction. All using agencies shall furnish such these reports as the Office of General Services chief procurement officers may require concerning use, needs, and stocks on hand, and the chief procurement officers shall prescribe forms to be used by the using agencies in requisitioning, ordering, and reporting supplies, services, information technology, and construction. The chief procurement officers shall limit requests for information to those items necessary for the effective operation of the purchasing system, but using agencies shall must be required to provide information as requested.”

SECTION 21. Section 11-35-1230(1) of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“(1) The Office of General Services designated board office, through consultation with the chief procurement officers, shall develop written plans for the auditing of state procurements. In procurement audits of governmental bodies thereafter, the auditors from the Office of General Services designated board office shall review the adequacy of the system’s internal controls in order to ensure compliance with the requirement of this code and the ensuing regulations. Any A noncompliance discovered through audit must be transmitted in management letters to the audited governmental body and the Budget and Control Board. The auditors shall provide in writing proposed corrective action to governmental bodies. Based upon audit recommendations of the Office of General Services designated board office, the board may
revoke certification as provided for in Section 11-35-1210 and
require the governmental body to make all procurements through
the office of materials management appropriate chief procurement
officer above a dollar limit set by the board, until such time as the
board is assured of compliance with this code and its regulations
by that governmental body.”

SECTION 22. Section 11-35-1240 of the 1976 Code, as last
amended by Act 153 of 1997, is further amended to read:

“Section 11-35-1240. (A) The board shall prescribe
administrative penalties for violation of the provisions of this code
and of regulations promulgated thereunder, excluding
those matters under the jurisdiction of the Ethics Commission as
provided by law.
(B) Violation of these provisions shall be grounds for loss of
or reduction in authority delegated by either the board or this
code.”

SECTION 23. Section 11-35-1410(2)(c) and (4) of the 1976
Code, as last amended by Act 153 of 1997, is further amended to
read:

“(c) states prices at which sales are currently or were last made
to a significant number of buyers constituting the general buying
public for the supplies, services, or information technology
involved.
(4) ‘Purchase description’ means specifications or any other
document describing the supplies, services, information
technology, or construction to be procured.”

SECTION 24. Section 11-35-1510 of the 1976 Code, as last
amended by Act 387 of 2000, is further amended to read:

“Section 11-35-1510. Unless otherwise provided by law, all
state contracts shall be awarded by competitive sealed
bidding, pursuant to Section 11-35-1520, except as provided in:
(1) Section 11-35-1250 (Authority to Contract for Auditing
Services);
(2) Section 11-35-1260 (Authority to Contract for Legal
Services);
(3) Section 11-35-1525 (Fixed Priced Bidding);
Section 11-35-1529 (Competitive On-line Bidding);

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

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

Section 11-35-1550 (Small Purchases);

Section 11-35-1560 (Sole Source Procurements);

Section 11-35-1570 (Emergency Procurements);

(11) Section 11-35-1575 (Procurements at Participation in Auction or Bankruptcy Sale);

(12) Section 11-35-1580 (Procurement of Information Technology); (Reserved)

Section 11-35-3020 (Construction Procurement Procedures);

Section 11-35-3220 (Architect-Engineer, Construction Management and Land Surveying Services Procurement Procedures);

Section 11-35-3230 (Exception for Small Architect-Engineer and Land Surveying Services Contracts)

(16) Section 11-35-1529 (Competitive On-line Bidding).”

SECTION 25. Section 11-35-1520 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-1520. (1) Condition for Use. Contracts amounting to twenty-five greater than fifty thousand dollars or more shall must be awarded by competitive sealed bidding except as otherwise provided in Section 11-35-1510.

(2) Invitation for Bids. An invitation for bids shall must be issued in an efficient and economical manner and shall must include specifications and all contractual terms and conditions applicable to the procurement.

(3) Notice. Adequate notice of the invitation for bids shall must be given at a reasonable time prior to before the date set forth therein in it for the opening of bids. Such The notice shall must include publications in a newspaper of general circulation in the State such as ‘South Carolina Business Opportunities’ or through a
means of central electronic advertising as approved by the Office of General Services designated board office. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.

(4) Receipt and Safeguarding of Bids. All bids (including modifications), received prior to the time of opening must be kept secure and unopened, except as provided for by regulation of the board.

(5) Bid Opening. Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids and in the manner prescribed by regulation of the board. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder, must be tabulated. The tabulation must be open to the public inspection at that time.

(6) Bid Acceptance and Bid Evaluation. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids must set forth the evaluation criteria to be used. No criteria may Criteria must not be used in bid evaluation that are not set forth in the invitation for bids. Bids must be evaluated based on the requirements set forth in the invitation for bids and in accordance with the regulations of the board.

(7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and reaward of awards or contracts, after award but prior to performance, may be permitted in accordance with regulations promulgated by the board. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated pursuant to it. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but prior to performance, must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency.

(8) Discussion with Bidders. As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the
procuring agency’s sole judgment, needing clarification shall must be accorded such an opportunity. Clarification of any a bidder’s bid must be documented in writing by the procurement officer and shall must be included with the bid. Documentation concerning the clarification shall must be subject to disclosure upon request as required by Section 11-35-410.

(9) Tie Bids. If two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined as follows in the following order of priority:

(a) If there is a South Carolina firm tied with an out-of-state firm, the award must be made automatically to the South Carolina firm.

(b) Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of the State must be resolved in favor of the South Carolina commodity.

(c) Tie bids involving a business certified by the South Carolina Office of Small and Minority Business Assistance as a Minority Business Enterprise must be resolved in favor of the Minority Business Enterprise.

(d) Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in the same taxing jurisdiction as the governmental body’s consuming location.

(e) In all other situations where in which bids are tied, the award will must be made by the purchasing agency to the tied bidder offering the quickest delivery time, or if the tied bidders have offered the same delivery time, the tie shall must be resolved by the flip of a coin in the office of the chief procurement officer or the head of a purchasing agency or either officer’s designee witnessed by all interested parties.

(10) Award. Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids shall must be given by posting such the notice at a location specified in the invitation for bids. For contracts with a total or potential value in excess of fifty thousand
dollars but less than one hundred thousand dollars, notice of the
award of a contract must be given by posting and must be sent to
all bidders responding to the solicitation on the same day that the
notice is posted in accordance with this section. For contracts with
a total or potential value of one hundred thousand dollars or
greater, notice of an intended award of a contract must be given by
posting the notice for ten days before entering into a contract and
must be sent to all bidders responding to the solicitation on the
same day that the notice is posted in accordance with this section.
The posting date shall appear on the face of all these notices. Prior
to the posting of the award, the procuring agency may negotiate with the lowest responsive and responsible bidder to
lower his bid within the scope of the invitation for bids. The
invitation for bids and the posted notice, a notice of award or notice
of intent to award must contain a statement of a bidder’s right to
protest under pursuant to Section 11-35-4210(1) and the date and
location of posting must be announced at bid opening. When a
contract has a total or potential value in excess of fifty thousand
dollars, in addition to the posted notice, notice of an intended
award must be given to all bidders responding to the solicitation,
except when only one response is received. Such notice must
contain a statement of the bidder’s right to protest under Section
11-35-4210(1).

When a contract has a total or potential value in excess of fifty
thousand dollars, sixteen days after notice is given the agency may
enter a contract with the bidder named in the notice in accordance
with the provisions of this code and of the bid solicited. When
only one response is received, the notice of intended intent to
award and the sixteen-day delay of award may be waived. A
determination of responsibility must be made before award in
accordance with Section 11-35-1810.

(11) Request for Qualifications. (a) Prior to soliciting bids, the procuring agency, acting through the authorized
procurement officer, may issue a request for qualifications from
prospective bidders. Such The request shall must contain, at a
minimum, a description of the goods or services scope of work to
be solicited by the invitation for bids, the general scope of the
work, the deadline for submission of information, and how
prospective bidders may apply for consideration. The request shall
require information concerning the prospective bidders’
product specifications, qualifications, experience, and ability to
perform the requirements of the contract. Adequate public notice
of the request for qualifications shall must be given in the manner
provided in Section 11-35-1520(3). The use of the request for qualifications is subject to the approval of the Office of General Services.

(b) After receipt of the responses to the request for qualifications from prospective bidders, the prospective bidders shall be ranked in writing from most qualified to least qualified on the basis of the information provided. Bids shall then be solicited from at least the top two prospective bidders by means of an invitation for bids. The failure of a prospective bidder to be selected to receive the invitation for bids shall not be grounds for protest under Section 11-35-4210. The determination regarding how many bids to solicit is not subject to review under Article 17.

(12) Provisions Not to Apply. The provisions of this section shall not apply to maintenance services for aircraft of the Division of Aeronautics of the Department of Commerce. (Reserved)

(13) Minor Informalities and Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

(a) failure of a bidder to return the number of copies of signed bids required by the solicitation;

(b) failure of a bidder to furnish the required information concerning the number of the bidder’s employees or failure to make a representation concerning its size;

(c) failure of a bidder to sign its bid, but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization, and the bid carries such a signature or the unsigned bid is accompanied by other material indicating the bidder’s intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;
(d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if:

(i) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid, thereon, provided that if the bidder states under oath that it received the amendment prior to bidding and that the bidder will stand by its bid price; or,

(ii) the amendment has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the governmental body;

(e) failure of a bidder to furnish an affidavit concerning affiliates;

(f) failure of a bidder to execute the certifications with respect to equal opportunity and affirmative action programs;

(g) failure of a bidder to furnish cut sheets or product literature;

(h) failure of a bidder to furnish certificates of insurance;

(i) failure of a bidder to furnish financial statements;

(j) failure of a bidder to furnish references;

(k) failure of a bidder to furnish its bidder number; and

(l) notwithstanding Section 40-11-180 Title 40, the failure of a bidder to indicate his contractor’s license number or other evidence of licensure, provided that a contract shall not be awarded to the bidder unless and until the bidder is properly licensed under the laws of South Carolina.”

SECTION 26. Section 11-35-1525(2) and (4) of the 1976 Code, as added by Act 153 of 1997, is amended to read:

“(2) Fixed Price Bidding. The purpose of fixed price bidding is to provide multiple sources of supply for specific goods or services, supplies, or information technology based on a preset maximum price which the State will pay for such goods or services, supplies, or information technology.

(4) Pricing. The State shall establish, prior to issuance of the fixed price bid, a maximum amount the State will pay for the goods or services, supplies, or information technology desired.”

SECTION 27. Section 11-35-1528(2) and (5) of the 1976 Code, as added by Act 153 of 1997, is amended to read:
“(2) Best Value Bidding. The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific goods or supplies, services, or information technology based on pre-determined criteria identified by the State.

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

(a) operational costs that the State would incur if the bid is accepted;
(b) quality of the product or service, or its technical competency;
(c) reliability of delivery and implementation schedules;
(d) maximum facilitation of data exchange and systems integration;
(e) warranties, guarantees, and return policy;
(f) vendor financial stability;
(g) consistency of the proposed solution with the state’s planning documents and announced strategic program direction;
(h) quality and effectiveness of business solution and approach;
(i) industry and program experience;
(j) prior record of vendor performance;
(k) vendor expertise with engagement of similar scope and complexity;
(l) extent and quality of the proposed participation and acceptance by all user groups;
(m) proven development methodologies and tools; and
(n) innovative use of current technologies and quality results.”

SECTION 28. Section 11-35-1530 of the 1976 Code, as amended by Act 153 of 1997, is further amended to read:

“Section 11-35-1530. (1) Conditions for Use. If a purchasing agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a contract may be entered into by
competitive sealed proposals subject to the provisions of Section 11-35-1520 and the ensuing regulations, unless otherwise provided for in this section. Subject to the requirements of Section 11-35-3220, the board may provide by regulation that it is either not practicable or not advantageous to the State to procure specified types of supplies, services, information technology, or construction by competitive sealed bidding.

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

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

(4) Request for Qualifications. Prior to soliciting proposals, the procuring agency, acting through the authorized procurement officer, may issue a request for qualifications from prospective offerors. Such request shall contain at a minimum a description of the goods or services, scope of the work to be solicited by the request for proposals, and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract.

(b) After receipt of the responses to the request for qualifications from prospective offerors, the perspective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two prospective offerors by means of a request for proposals. The failure of a prospective offeror to be selected to receive the request for proposals shall not be grounds for protest under Section 11-35-4210. The determination regarding how many proposals to solicit is not subject to review pursuant to Article 17.

(5) Evaluation Factors. The request for proposals shall state the relative importance of the factors to be considered in evaluating proposals but shall not require a numerical weighting for each factor. Price may, but need not, be an evaluation factor.
(6) Discussion with Offerors. As provided in the request for proposals, and under regulations, discussions may be conducted with apparent responsive offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of the requirements of, and responsiveness to, the request for proposals solicitation requirements. All offerors, whose proposals, in the procuring agency’s procurement officer’s sole judgment, need clarification shall must be accorded such an opportunity.

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

(8) Negotiations. Whether price was an evaluation factor or not, the procuring agency, through the appropriate procurement official, may, in its sole discretion and not subject to challenge through a protest filed under Section 11-35-4210, review under Article 17, may proceed in any of the manners indicated below, except that in no case may confidential information derived from proposals and negotiations submitted by competing offerors be disclosed:

(a) negotiate price with the highest ranked offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted, in the sole discretion of the procuring agency, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the procuring agency in its sole discretion; or

(b) negotiate with the highest ranking offeror on price, on matters affecting the scope of the contract, so long as the overall nature and intent of the contract is not changed changes are within the general scope of the request for proposals, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the procuring agency procurement officer, with the second, and then the third, and so on, ranked offerors to such the level of ranking as determined by the procuring agency procurement officer in its his sole discretion; or
during the negotiation process as outlined in subsections (a) and (b) item (a) above, if an agency the procurement officer is unsuccessful in its first round of negotiations, if he may reopen negotiations with any offeror with whom he previously negotiated; or

if, after following the procedures set forth in Section 11-35-1530(8), a contract is not able to be negotiated, the procurement officer may make changes within the general scope of the request for proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and may provide all responsive offerors must be allowed an opportunity to submit their best and final offers.

In conducting negotiations, there must be no disclosure of any confidential information derived from proposals and negotiations submitted by competing offerors.

(9) Award. Award must be made to the responsive responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the procuring agency procurement officer determines to utilize one of the options provided in Section 11-35-1530(8). The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contract shall be the same as those stated provided in Section 11-35-1520(10)."

SECTION 29. Section 11-35-1550 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

"Section 11-35-1550. Authority. (1) The following small purchase procedures may be utilized only in conducting procurements for governmental bodies that are less than twenty-five up to fifty thousand dollars in actual or potential value. An agency a governmental body may conduct its own procurement under five up to fifty thousand dollars in actual or potential value, and an agency a governmental body that has received procurement certification pursuant to Section 11-35-1210 to handle the type and estimated value of the procurement may conduct the procurement under its own authority in accordance with the procedures prescribed in this section; however, procurement code. Procurement requirements must not be artificially divided by governmental bodies so as to constitute a small purchase under pursuant to this section.
(2) Competition and Price Reasonableness. (a) Purchases not in excess of one thousand five hundred dollars. Small purchases not exceeding one thousand five hundred dollars may be accomplished without securing competitive quotations if the prices are considered to be reasonable. The purchasing office must annotate the purchase requisition: ‘Price is fair and reasonable’ and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase ‘not in excess of’ may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement officer of the governmental body suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.

(b) Purchases from one thousand five hundred one dollars to five thousand dollars. Solicitations of verbal or written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source.

(c) Purchases from five over two thousand one five hundred dollars to ten thousand dollars. Solicitation of written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition for a small purchase over two thousand five hundred dollars but not in excess of ten thousand dollars. The award must be made to the lowest responsive and responsible sources.

(d) Purchases from over ten thousand one dollars up to twenty-five fifty thousand dollars. Written solicitation of written quotes, bids, or proposals must be made for a small purchase over ten thousand dollars but not in excess of fifty thousand dollars. The procurement must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the Office of General Services designated board office. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award must be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.
(3) Protest rights. The provisions of Section 11-35-4210 do not apply to contracts awarded under the procedures set forth in this section.

(4) All competitive procurements above twenty-five thousand dollars must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the Office of General Services designated board office. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement advertised in the “South Carolina Business Opportunities” publication.

(4) The Division of Aeronautics of the Department of Commerce may act as its own purchasing agency for all procurements of maintenance services for aircraft and these procurements may be conducted pursuant to Section 11-35-1550(2)(b).

SECTION 30. Section 11-35-1560 of the 1976 Code, as last amended by Act 153 of 1997, is further 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.

(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. Any 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 explanation as to why no other will be suitable or acceptable to meet the need.

(C) Any violation of these regulations by a purchasing agency shall, upon recommendation of the Office of General Services designated board office with approval of the majority of
the Budget and Control Board, must result in the temporary suspension, not to exceed one year, of the violating agency’s governmental body’s ability to procure supplies, services, information technology, or construction items under pursuant to this section.”

SECTION 31. Section 11-35-1575 of the 1976 Code, as added by Act 153 of 1997, is amended to read:

“Our 11-35-1575. A governmental body having knowledge of either an auction or a sale of supplies from a bankruptcy may elect to participate. The governmental body shall (a) survey the needed items being offered at auction to ascertain their condition and usefulness, (b) determine a fair market value for new like items through informal quotes, (c) determine the fair market value from similar items considering age and useful life, and (d) estimated repair cost and delivery cost, if any, of the desired items. Using this information, the governmental body shall determine the maximum price that it can pay for each item desired. At the auction or sale, the governmental body shall not exceed the maximum price so determined.”

SECTION 32. RESERVED.

SECTION 33. Section 11-35-1825 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Our 11-35-1825. The State Engineer’s Office shall develop a procedure and a list of criteria for prequalifying construction bidders and sub-bidders. The criteria shall must include, but not be limited to, prior performance, recent past references on all aspects of performance, financial stability, and experience on similar construction projects. A governmental body may use the prequalification process only for projects where the construction involved is unique in nature or over ten million dollars in value as determined by and subject to the approval of the State Engineer’s Office. All prequalification projects must be under the supervision of the State Engineer’s Office, unless the project falls within the governmental body’s procurement certification limits. When the prequalification process is employed, only those bidders or sub-bidders who are prequalified through this procedure are entitled to may submit a bid for the project. The determination
of which bidders and sub-bidders are prequalified, and thereby entitled to bid, is not protestable under pursuant to Section 11-35-4210 or any other provision of this code.”

SECTION 34. Section 11-35-2010 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-2010. (1) Types of Contracts. Subject to the limitations of this section, any type of contract which will promote the best interests of the State may be used, except that the use of a cost-plus-a-percentage-of-cost contract shall must be approved by the Office of General Services appropriate chief procurement officer. A cost-reimbursement contract, including a cost-plus-a-percentage-of-cost contract, shall may be used only when a determination sufficient for external audit is prepared showing that the contract is likely to be less costly to the State than any other type or that it is impracticable to obtain the supplies, services, information technology, or construction required except under such a that contract.

(2) Contract Forms. The board shall promulgate by regulation the form of the contracts to be used in connection with state purchasing and construction. The forms as shall be developed for Article 9 of this chapter shall be printed as a part of those regulations. A governmental body may enter into a contract or agreement without using the form promulgated pursuant to the board’s regulation when the contract or agreement is for the rental of equipment valued at ten thousand dollars or less and the duration of the contract or agreement does not exceed ninety days.

(2)(a) As used in this section:
(i) ‘Contracting document’ means a standardized or model instrument, or a component part of it, for use as a contract, invitation for bids, request for proposals, request for qualifications, or instruction to bidders including, but not limited to, a contract clause or solicitation provision.
(ii) ‘Usage instructions’ means directions regarding (1) conditions for use of a contracting document, (2) completion of a contracting document, and (3) the process for obtaining permission, if possible, to omit or depart from the contracting document’s established content for a particular solicitation or contract.
(b) The chief procurement officers may develop contracting documents for their respective areas of responsibility. Contracting
documents may be published as internal operating procedures. Contracting documents may be accompanied by usage instructions.

(c) The board may adopt formally a contracting document, as developed by the appropriate chief procurement officer, for mandatory use by all governmental bodies only after notice of the proposed adoption has been published in the State Register and the board has provided the public at least sixty days to make written comments. If a contracting document is adopted by the board, the contracting document must be published in the State Register, accompanied by usage instructions, and used by all governmental bodies in accordance with its usage instructions. The chief procurement officers are not required to submit for board approval contracting documents used in connection with either solicitations issued or contracts awarded by the board or its offices.

(d) Notwithstanding item (c) above, the board may promulgate contracting documents as regulations.

SECTION 35. Section 11-35-2030 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-2030. (1) Specified Period. Unless otherwise provided by law, a contract for supplies, or services, or information technology shall not be entered into for any period of more than one year unless approved in a manner prescribed by regulation of the board; provided, that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for them.

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

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

(b) that such a contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in state procurement.

(3) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.
The maximum time for any multi-term contract is five years. Contract terms of up to seven years may be approved by the Director of the Office of General Services designated board officer. Contracts exceeding seven years must be approved by the Budget and Control board.”

SECTION 36. Section 11-35-2210 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-2210. The Office of General Services shall be appropriate chief procurement officer or his designee is authorized, at reasonable times, to inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the State.”

SECTION 37. Section 11-35-2410 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-2410. (A) The determinations required by the following sections and related regulations are final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law:

Section 11-35-1520(7) (Competitive Sealed Bidding: Correction or Withdrawal of Bids; Cancellation of Awards), Section 11-35-1520(11) (Competitive Sealed Bidding: Request for Qualifications), Section 11-35-1525(1) (Competitive Fixed Price Bidding: Conditions for Use), Section 11-35-1528(1) (Competitive Best Value Bidding: Conditions for Use), Section 11-35-1528(8) (Competitive Best Value Bidding: Award), Section 11-35-1529(1) (Competitive On-line Bidding: Conditions for Use), Section 11-35-1530(1) (Competitive Sealed Proposals, Conditions for Use), Section 11-35-1530(4) (Competitive Sealed Proposals: Request for Qualifications), Section 11-35-1530(8) (Competitive Sealed Proposals: Negotiations), Section 11-35-1530(9) (Competitive Sealed Proposals: Award), Section 11-35-1540 (Negotiations After Unsuccessful Competitive Sealed Bidding), Section 11-35-1560 (Sole Source Procurement), Section 11-35-1570 (Emergency Procurement), Section 11-35-1710 (Cancellation of Invitation for Bids or Requests for Proposals), Section 11-35-1810(2) (Responsibility of Bidders and Offerors, Determination of Nonresponsibility), Section 11-35-1825 (Prequalification of
Construction Bidders), Section 11-35-1830(3) (Cost or Pricing Data, Cost or Pricing Data Not Required), Section 11-35-2010 (Types and Forms of Contracts), Section 11-35-2020 (Approval of Accounting System), Section 11-35-2030(2) (Multi-Term Contracts, Determination Prior to Use), Section 11-35-3020(2)(d) (Construction Procurement Procedures: Negotiations after Unsuccessful Competitive Sealed Bidding), Section 11-35-3220(5) (Procurement Procedure, Selection and Ranking of the Five Most Qualified), and Section 11-35-4210(7) (Stay of Procurement During Protests, Decision to Proceed), and Section 11-35-4810 (Cooperative Use of Supplies, Services, or Information Technology) shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

(B) The chief procurement officers or their designees shall review samples of such the determinations periodically, and issue reports and recommendations on the appropriateness of the determinations made.”

SECTION 38. Section 11-35-2440 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-2440. (1)(a) Contents of Records. Any A governmental body as defined in Section 11-35-310(18) shall submit quarterly a record listing all contracts made under pursuant to Section 11-35-1560 (Sole Source Procurement) or Section 11-35-1570 (Emergency Procurements) to the chief procurement officers. The record shall must contain:

(a)(i) each contractor’s name;
(b)(ii) the amount and type of each contract;
(c)(iii) a listing of supplies, services, information technology, or construction procured under each contract.

(b) The chief procurement officers shall maintain these records for five years.

(2) Publication of Records. A copy of the record shall must be submitted to the board on an annual basis and shall must be available for public inspection.”

SECTION 39. Section 11-35-2710 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-2710. The board shall promulgate regulations governing the preparation, maintenance, and content of
specifications for supplies, services, information technology, and construction required by the State.”

SECTION 40. Section 11-35-2720 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-2720. The chief procurement officers shall may prepare or review, issue, revise, and maintain the specifications for supplies, services, information technology, and construction required by the State, except for supplies, services, information technology, and construction items procured by the governmental bodies pursuant to Sections 11-35-1550, 11-35-1570, and 11-35-3230, the specification for which shall must be prepared and maintained by the using agencies in accordance with the provisions of this article and regulations promulgated hereunder under it and monitored periodically by the chief procurement officers.”

SECTION 41. Section 11-35-3020 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-3020. (1) Source Selection. All state construction contracts shall must be awarded by competitive sealed bidding pursuant to the procedures set forth in Section 11-35-1520, subject to the exceptions enumerated in subsection (2) of this section and except as provided in Sections 11-35-1550, 11-35-1560, and 11-35-1570. Competitive sealed proposals as provided in Section 11-35-1530 and multi-step sealed bidding as provided in Section 11-35-1520(11) shall must not be used, except in such cases and in accordance with criteria as may be authorized and prescribed by regulation of the board.

(2) Exceptions in Competitive Sealed Bidding Procedures. The process of competitive sealed bidding as required by subsection (1) of this section shall must be performed in accordance with the procedures outlined in Article 5 of this code subject to the following exceptions:

(a) Invitation for Bids. In lieu Instead of Section 11-35-1520(2), Section 11-35-1520(3), and Section 11-35-1520(4), invitations for bids for each state construction project subject to subsection (1) of this section shall must be made in the following manner. Each using agency shall must be responsible for developing a formal invitation for bids for each state construction project subject to subsection (1) of this section. The invitation shall must include, but not be limited to, all contractual terms and
conditions applicable to the procurement. A copy of each invitation for bids shall must be filed with the State Engineer’s Office and shall must be advertised formally advertised in an official state government publication. The manner in which this official state government publication shall must be published, the content of the publication itself, the frequency of the publication, the method of subscription to the publication, and the manner by which the publication will be is distributed shall must be established by regulation of the board.

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

(i) The using agency, in consultation with the architect-engineer assigned to the project, shall identify by specialty in the invitation for bids all subcontractors, as defined by applicable documents of the American Institute of Architects, who are expected to perform work for the prime contractor to or about the construction when those subcontractors’ contracts are each expected to exceed three percent of the prime contractor’s total base bid. In addition, the using agency, in consultation with the architect-engineer assigned to the project, may identify by specialty in the invitation for bids any subcontractors who are expected to perform work which is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable pursuant to Section 11-35-4210 or any other provision of this code. Any A bidder in response to an invitation for bids shall set forth in his bid the name of only those subcontractors that will to perform the work as identified in the invitation for bids. If the bidder determines to use his own employees to perform any a portion of the work for which he would otherwise be required to list a subcontractor and if the bidder is qualified to perform such that work under the terms of the invitation for bids, the bidder shall list himself in the appropriate place in his bid and not subcontract any of that work except with the approval of the using agency for good cause shown.

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

(iii) No A prime contractor whose bid is accepted shall may not substitute any a person as subcontractor in place of the
subcontractor listed in the original bid, except for one or more of
the following reasons:

(a) upon a showing satisfactory to the using agency by
the contractor that a subcontractor who was listed is not financially
responsible;

(b) upon a showing satisfactory to the using agency by
the contractor that the scope of work bid by a listed subcontractor
did not include a portion of the work required in the plans and
specifications, and the exclusion is not clearly set forth in the listed
subcontractor’s original bid;

(c) upon a showing satisfactory to the using agency
made by the contractor within four working days of the bid
opening that the subcontractor was listed as a result of an
inadvertent clerical error;

(d) upon a showing satisfactory to the using agency by
the contractor that the listed subcontractor failed or refused to
submit a performance and payment bond when requested by the
prime contractor after the subcontractor had represented to the
prime contractor that he could obtain a performance and payment
bond;

(e) upon a showing satisfactory to the using agency by
the contractor that the listed subcontractor is required to be
licensed and does not have the license by the time it is required by
law;

(f) when the listed subcontractor fails or refuses to
perform his subcontract;

(g) when the work of the listed subcontractor is found
by the using agency to be substantially unsatisfactory;

(h) upon mutual agreement of the contractor and
subcontractor;

(i) with the consent of the using agency for good cause
shown.

(iv) The request for substitution must be made to the using
agency in writing. This written request does not give rise to any a
private right of action against the prime contractor in the absence
of actual malice.

(v) Where substitution is allowed, the prime contractor,
before obtaining prices from any other another subcontractor, must
shall attempt in good faith to negotiate a subcontract with at least
one subcontractor whose bid was received prior to before the
submission of the prime contractor’s bid. Nothing in this This
section affects does not affect a contractor’s ability to request
withdrawal of a bid in accordance with the provisions of this code and the regulations promulgated under pursuant to it.

(vi) The using agency shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening.

(c) In lieu Instead of Section 11-35-1520(10) the following provisions apply. Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids shall must be given by posting such the notice at a location which has been that is specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of the bidder’s right to protest under pursuant to Section 11-35-4210(1) and the date and location of posting must be announced at bid opening. In addition to posting notice as provided above, the using agency shall promptly shall send all responsive bidders a copy of the notice of intended award and of the bid tabulation. Such The mailed notice must indicate the posting date and must contain a statement of the bidder’s right to protest under pursuant to Section 11-35-4210(1).

Sixteen days After ten days’ notice is given, the using agency may enter into a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. A determination of responsibility must be made before award in accordance with Section 11-35-1810. The procurement officer must comply with Section 11-35-1810.

If, at bid opening, only one bid is received and determined to be responsive and responsible and within the agency’s construction budget, award may be made without the sixteen-day ten-day waiting period.

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

(1) When bids received pursuant to an invitation for bids exceed available funds, and it is determined in writing by the agency that circumstances will do not permit the delay required to resolicit competitive sealed bids, and the base bid, less any deductive alternates, does not exceed available funds by an amount greater than ten percent of the construction budget established for that portion of the work, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder, provided that this base bid, less any deductive alternates, does not
exceed available funds by an amount greater than five percent of
the construction budget established for that portion of the work.
The using agency may change the scope of the work to reduce the
cost to be within the established construction budget but shall not
reduce the cost below the established construction budget more
than ten percent without a written request by the agency and the
written approval of the chief procurement officer based on the best
interest of the State.

(2) When the lowest base bid received pursuant to an
invitation for bids exceeds approved available funds and the using
agency is able to identify additional funds for the project, as
certified by the appropriate fiscal officers, in the amount of the
difference between the lowest base bid and the approved available
funds for the project, the using agency shall submit its request to
use such additional funds to the board and the Joint Bond Review
Committee in accordance with Sections 2-47-40 and 2-47-50.

SECTION 42. Section 11-35-3030 of the 1976 Code, as last
amended by Act 97 of 2005, is further amended to read:

“Section 11-35-3030. (1) Bid Security. (a) Requirement for Bid
Security. Bid security is required for all competitive sealed
bidding for construction contracts in excess of one-hundred fifty
thousand dollars and such other contracts as may be prescribed by
the State Engineer’s Office. Bid security is a bond provided by a
surety company meeting the criteria established by the regulations
of the board or otherwise supplied in a form which may be
established by regulation of the board.

(b) Amount of Bid Security. Bid security shall be in an
amount equal to at least five percent of the amount of the bid at a
minimum.

(c) Rejection of Bids for Noncompliance with Bid Security
Requirements. When the invitation for bids requires security,
noncompliance requires that the bid be rejected except that a
bidder who fails to provide bid security in the proper amount or a
bid bond with the proper rating shall be given one working
day from bid opening to cure such deficiencies. If the bidder
cannot cure these deficiencies within one working day
of bid opening, his bid shall be rejected.

(d) Withdrawal of Bids. After the bids are opened, they
shall be irrevocable for the period specified in the invitation
for bids. If a bidder is permitted to withdraw its bid before bid opening pursuant to Section 11-35-1520(8) no action shall must not be had against the bidder or the bid security.

(2) Contract Performance Payment Bonds. (a) When Required-Amounts. When a construction contract is awarded pursuant to Section 11-35-3020, the following bonds or security shall must be delivered to the using agency and shall become binding on the parties upon the execution of the contract:

(i) a performance bond satisfactory to the State, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the State, in an amount equal to one hundred percent of the price specified in the contract;

(ii) a payment bond satisfactory to the State, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the State, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall must be in an amount equal to one hundred percent of the contract price.

(iii) in the case of a construction contract valued at one hundred fifty thousand dollars or less, the using agency may waive the requirements of (i) and (ii) above, provided that the using agency has protected the State.

(b) Authority to Require Additional Bonds. Nothing in subsection Subsection (2) of this section shall be construed to does not limit the authority of the board to require a performance bond or other security in addition to these bonds, or in circumstances other than specified in item (a) of such that subsection in accordance with regulations promulgated by the board.

(c) Suits on Payment Bonds--Right to Institute. Every person who has furnished labor, material, or rental equipment to a bonded contractor or his subcontractors for the work specified in the contract, and who has not been paid in full therefor for it before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by such the person or material or rental equipment was furnished or supplied by such the person for which such the claim is made, shall have has the right to sue on the payment bond for the amount, or the balance thereof of it, unpaid at the time of institution of such the suit and to prosecute such the action for the sum or sums justly due such the person. A remote claimant shall have has a right of action on the payment bond only upon giving written notice to the contractor within
ninety days from the date on which such the person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which such the claim is made, stating with substantial accuracy the amount claimed as unpaid and the name of the party to whom the material or rental equipment was furnished or supplied or for whom the labor was done or performed. Such The written notice to the bonded contractor shall must be served personally served or served by mailing the same notice by registered or certified mail, postage prepaid, in an envelope addressed to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. However, in no event shall the aggregate amount of any a claim against such the payment bond by a remote claimant may not exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such The written notice to the bonded contractor shall must be served personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid, to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall may not lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond may not exceed the penal sum of the bond. No A suit under this section shall must not be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment. For purposes of this section, ‘bonded contractor’ means the contractor or subcontractor furnishing the payment bond, and ‘remote claimant’ means a person having a direct contractual relationship with a subcontractor of a bonded contractor, but no contractual relationship expressed or implied contractual relationship with the bonded contractor.

(d) Suits on Payment Bonds--Where and When Brought. Every suit instituted upon a payment bond shall must be brought in a court of competent jurisdiction for the county or circuit in which
the construction contract was to be performed, but no such except
that a suit shall must not be commenced after the expiration of one
year after the day on which the last of the labor was performed or
material was supplied by the person bringing suit. The obligee
named in the bond need not be joined as a party in any such the
suit.

(3) Bonds Forms and Copies. (a) Bond Forms. The board
shall promulgate by regulation the form of the bonds required by
this section.

(b) Certified Copies of Bonds. Any A person may request
and obtain from the using agency a certified copy of a bond upon
payment of the cost of reproduction of the bond and postage, if
any. A certified copy of a bond shall be is prima facie evidence of
the contents, execution, and delivery of the original.

(4) Retention. (a) Maximum amount to be withheld. In
any a contract or subcontract for construction which contract or
subcontract provides for progress payments in installments based
upon an estimated percentage of completion, with a percentage of
the contract’s proceeds to be retained by the State or general
contractor pending completion of the contract or subcontract, the
retained amount of each progress payment or installment must be
no more than three and one-half percent.

(b) Release of Retained Funds. When the work to be
performed on a state construction project or pursuant to a state
construction contract is to be performed by multiple prime
contractors or by a prime contractor and multiple subcontractors,
the work contracted to be done by each individual contractor or
subcontractor will be is considered a separate division of the
contract for the purpose of retention. As each such division of the
contract is certified as having been completed, that portion of the
retained funds which is allocable to the completed division of the
contract shall must be released forthwith to the prime contractor,
who shall, within ten days of its receipt, shall release to the
subcontractor responsible for the completed work the full amount
of any retention previously withheld from him by the prime
contractor.

(5) Bonds for Bid Security and Contract Performance. The
requirement of a bond for bid security on a construction contract,
pursuant to subsection (1), and a construction contract performance
bond, pursuant to subsection (2), may not include a requirement
that the surety bond be furnished by a particular surety company or
through a particular agent or broker.”
SECTION 43. Section 11-35-3040 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-3040. (1) Contract Clauses. State construction contracts and subcontracts promulgated by regulation pursuant to Section 11-35-2010(2) may include clauses providing for adjustments in prices, time of performance, and other appropriate contract provisions including, but not limited to:

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

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

(ii) all changes in the time of performance of the contract that do not alter the scope of the contract work;

(b) variations occurring between estimated quantities of work in the contract and actual quantities;

(c) suspension of work ordered by the governmental body;

(d) site conditions differing from those indicated in the contract or ordinarily encountered, except that differing site condition clauses promulgated by the board need not be included in a contract:

(i) when the contract is negotiated; or

(ii) when the parties have otherwise agreed with respect to the risk of differing site conditions.

(2) Price Adjustments. (a) Adjustments in price pursuant to clauses adopted or promulgated under subsection (1) of this section shall pursuant to Section 11-35-2010 must be computed and documented with a written determination. The price adjustment agreed upon shall must approximate the actual cost to the contractor and all costs incurred by the contractor shall must be justifiably compared with prevailing industry standards, including reasonable profit. Costs shall must be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon thereafter as practicable, and shall must be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the contractor:

(i) by unit prices specified in the contract or subsequently agreed upon;

(ii) by the costs attributable to the events or situations under such clauses with adjustment of profits or fee, all as specified in the contract or subsequently agreed upon;

(iii) by agreement on a fixed price adjustment;
(iv) in such other manner as the contracting parties may mutually agree; or

(v) in the absence of agreement by the parties, through unilateral determination by the governmental body of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable sections of the regulations issued pursuant to this chapter and subject to the provisions of Article 17 of this chapter.

(b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 11-35-1830.

(3) Additional Contract Clauses. The construction contracts and subcontracts promulgated pursuant to Section 11-35-2010(2) may include clauses providing for appropriate remedies which cover as a minimum:

(a) specified excuses for delay or nonperformance;

(b) termination of the contract for default;

(c) termination of the contract in whole or in part for the convenience of the governmental body.

(4) Modification of Required Clauses. The chief procurement officer may vary the clauses promulgated by the board pursuant to subsection (1) and subsection (3) of this section for inclusion in any particular construction contract; provided that any of the variations are supported by a written determination that states the circumstances justifying such variations; and provided, further, that if notice of any such a material variation be stated in the invitation for bids.”

SECTION 44. Section 11-35-3060 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-3060. Every contract modification, change order, or contract price adjustment under a construction contract with the State shall be subject to the procedures outlined in Sections 3A and 3B of Act 761 of 1976 which were added pursuant to Sections 2-47-40 and 2-47-50.”

SECTION 45. Section 11-35-3220 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-3220. (1) Agency Selection Committee. Each using agency shall establish its own architect-engineer,
construction management, and land surveying services selection committee, hereinafter referred to as the agency selection committee, which shall be composed of those individuals whom the agency head determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The head of the using agency or his qualified responsible designee shall sit as a permanent member of the agency selection committee for the purpose of coordinating and accounting for the committee’s work. To assist an agency selection committee in the selection of firms to be employed for significant or highly technical projects and to facilitate prompt selections, the agency selection committee may invite the State Engineer or his designee to sit as a nonvoting member of the committee.

(2)(a) Advertisement of Project Description. The agency selection committee shall be responsible for:

(a)(i) developing a description of the proposed project;

(b)(ii) enumerating all required professional services for that project;

(c)(iii) preparing a formal invitation to firms for submission of information.

(b) The invitation shall include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, the submission deadline, and how interested firms may apply for consideration. The agency selection committee shall file a copy of the project description and the invitation with the State Engineer’s Office. The invitation shall be advertised in an official state government publication. The manner in which this official state government publication shall be published, the content of the publication itself, the frequency of the publication, the method for subscription to the publication, and the manner by which the publication will be distributed shall be established by regulation of the board.

(3) Response to Invitation. The date for submission of information from interested persons or firms in response to an invitation shall not be less than fifteen days after publication of the invitation. Interested architect-engineer, construction management, and land surveying persons or firms shall be required to respond to the invitation with the submission of a current and accurate Federal Standard Form 254, Architect-Engineer and Related Services Questionnaire, and Federal Standard Form 255, Architect-Engineer and Related
(4) Interviews with Interested Firms. Following receipt of information from all interested persons and firms, the agency selection committee shall hold interviews with at least five three persons or firms who have responded respond to the committee’s advertisement and who are deemed considered most qualified on the basis of information available prior to before the interviews. A list of firms selected for interview shall must be sent to all firms that submitted information in response to the advertisement, prior to before the date selected for the interviews. If less than five three persons or firms have responded respond to the advertisement, the committee shall hold interviews with those that did respond. The agency selection committee’s determination as to which will are to be interviewed shall must be in writing and shall be based upon its review and evaluation of all submitted materials. The written report of the committee shall must specifically list specifically the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. The purpose of the interviews shall be is to provide such the further information as that may be required by the agency selection committee to fully acquaint itself with the relative qualifications of the several interested firms.

(5) Selection and Ranking of the Five Three Most Qualified.
(a) The agency selection committee shall evaluate each of the persons or firms interviewed in view of their:
   (i) past performance;
   (ii) the ability of professional personnel;
   (iii) demonstrated ability to meet time and budget requirements;
   (iv) location and knowledge of the locality of the project
   if the application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project;
   (v) recent, current, and projected workloads of the firms;
   (vi) creativity and insight related to the project; and
   (vii) related experience on similar projects;
   (viii) volume of work awarded by the using agency to the person or firm during the previous five years, with the objective of effectuating an equitable distribution of contracts by the State among qualified firms including Minority Business Enterprises.
certified by the South Carolina Office of Small and Minority Business Assistance and firms that have not had previous state work; and 

(ix) any other special qualification required pursuant to the solicitation of the using agency.

(b) Based upon these evaluations, the agency selection committee shall select the five three persons or firms which that in its judgment, are the best qualified, ranking the five three in priority order. The agency selection committee’s report ranking the five three chosen persons or firms shall must be in writing and shall include data substantiating its determinations.

(6) Notice of Selection and Ranking. When it is determined by the agency that the ranking report is final, written notification of the election must be in writing and shall include data substantiating its determinations.  

(7) Negotiation of Contract. The governing body of the using agency or its designee shall negotiate a contract for services with the most qualified person or firm at a compensation which that is fair and reasonable to the State. Should if the governing body of the using agency or its designee be unable to negotiate a satisfactory contract with this person or firm, negotiations shall must be formally terminated. Negotiations shall must commence in the same manner with the second and then the third, fourth and fifth most qualified until a satisfactory contract has been negotiated. If no an agreement is not reached with one of the five three, additional persons or firms in order of their competence and qualifications shall must be selected after consultation with the agency selection committee, and negotiations shall must be continued in the same manner until agreement is reached.

(8) State Engineer’s Office Review. The head of the using agency shall submit the following documents to the State Engineer’s Office for its review:

(a) the written report of the agency selection committee, listing the persons or firms that responded to the invitation to submit information and enumerating the reasons of the committee for selecting the particular ones to be interviewed;

(b) the written ranking report of the agency selection committee and all data substantiating the determinations made in that report; and

(c) the tentative contract between the using agency and the selected person or firm.

(9) Approval or Disagreement by State Engineer’s Office. The State Engineer’s Office shall have has ten days to review the data
submitted by the agency selection committee, to determine the
volume of work previously awarded to the firm by the State, with
the object of effecting an equitable distribution of contracts among
qualified firms, and to determine its position with respect to the
particular person or firm recommended for approval by the agency.
If the State Engineer’s Office disagrees with the proposal, it may
contest the proposal by submitting the matter to the board for
decision. In the event of approval, the State Engineer’s Office
shall notify immediately the using agency and the
person or firm selected of the award and thereby authorize the
using agency to execute a contract with the selected person or firm.
In the event of disagreement, the State Engineer’s Office
immediately shall notify the using agency in
writing of its intention to contest the ranking and the reasons
therefore for it. All contract negotiations by the governing body
shall be suspended pending a decision by the board
concerning a contested ranking. The board shall hear any such
contests at its next regularly scheduled meeting subsequent to after
notification of the using agency. If the board rules in support of
the State Engineer’s Office position, the using agency shall submit
the name of another person or firm to the State Engineer’s Office
for consideration, selected in accordance with the procedures
prescribed herein in this section. If the board rules in support of
the using agency, the using agency shall be notified in
writing and thereby authorized to execute a contract with the
selected person or firm.”

SECTION 46. Section 11-35-3230 of the 1976 Code, as last
amended by Act 153 of 1997, is further amended to read:

“Section 11-35-3230. (1) Procurement Procedures for Certain
Contracts. All governmental bodies securing architect-engineer or land surveying service which is estimated not
to exceed twenty-five thousand dollars may employ the architects,
engineers, or land surveyors award contracts by direct negotiation
and selection, taking into account:
(a) the nature of the project;
(b) the proximity of the architect-engineer or land surveying
services to the project;
(c) the capability of the architect, engineer, or land surveyor
to produce the required service within a reasonable time;
(d) past performance and
(e) ability to meet project budget requirements.
(2) Maximum Fees Payable to One Person or Firm. Fees paid during the twenty-four month period immediately preceding negotiation of the contract by any single governmental body for professional services performed by any one architectural-engineering or land surveying firm pursuant to Section 11-35-3230(1) may not exceed seventy-five thousand dollars. All persons or firms seeking to render professional services pursuant to this section shall furnish the governmental body with whom the firm is negotiating a list of professional services, including fees paid therefore for them, performed for the governmental body during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.

(3) Approval Submission of Contracts by State Engineer’s Office. All copies of contracts, including the negotiated scope of services and fees, awarded pursuant to this section shall be submitted for approval to the State Engineer’s Office in accordance with regulations to be established by the board prior to the awarding and execution of the contracts for information.

(4) Splitting of Larger Projects Prohibited. No agency may not break a project into small projects for the purpose of circumventing the provisions of Section 11-35-3220 and this section.”

SECTION 47. Section 11-35-3240 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-3240. As relates to this code and the ensuing regulations, a ‘Manual for Planning and Execution of State Permanent Improvements’ shall be published by the board or its designee for use by governmental bodies and included in the regulations of the board. The manual may be revised as the board considers necessary, except that proposed changes are not effective until the board has provided the public at least sixty days to make written comments after notice of the proposed changes is published in South Carolina Business Opportunities.”

SECTION 48. Section 11-35-3245 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-3245. (a) No architect or engineer performing design work, or construction manager performing construction management services as described in Section 11-35-2910(3), pursuant to a contract awarded under any provision of this chapter pursuant to the provisions of Section 11-35-3220 or Section 11-35-3230, may not perform other work, by later amendment or separate contract award, on that project as a contractor or subcontractor either directly or through a business in which he or his architectural engineering or construction management firm has greater than a five percent interest.

(b) For purposes of this section, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a contractor or subcontractor. Should If the construction manager performs or is responsible for safety compliance and other incidental construction support activities, and these support activities are in noncompliance with the provisions of Section 41-15-210, then the construction management firm is subject to all applicable fines and penalties.”

SECTION 49. Section 11-35-3410(1) and (3) of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“(1) Contract Clauses. The board may promulgate regulations requiring the inclusion in state supplies, and services, and information technology contracts of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

(a) the unilateral right of a governmental body to order in writing changes in the work within the scope of the contract and temporary stopping of the work or delaying performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(3) Additional Contract Clauses. The board shall be authorized to promulgate regulations requiring the inclusion in state supplies, and services, and information technology contracts of clauses providing for appropriate remedies and covering the following subjects:

(a) specified excuses for delay or nonperformance;

(b) termination of the contract for default; and

(c) termination of the contract in whole or in part for the convenience of the governmental body.”
SECTION 50. Section 11-35-3510 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-3510. The board may promulgate regulations setting forth cost principles which shall that must be used to determine the allowability of incurred costs for the purpose of reimbursing costs under provisions in supplies, and services, and information technology contracts which that provide for the reimbursement of costs.”

SECTION 51. Section 11-35-3820 of the 1976 Code, as last amended by Act 153 or 1997, is further amended to read:

“Section 11-35-3820. Except as provided in Section 11-35-1580 and Section 11-35-3830 and the regulations pursuant thereto to them, the sale of all state-owned supplies, property, or personal property not in actual public use shall must be conducted and directed by the Office of General Services designated board office. Such The sales shall must be held at such places and in such a manner as in the judgment of the Office of General Services shall be designated board office is most advantageous to the State. Unless otherwise determined, sales shall must be by either public auction or competitive sealed bid to the highest bidder. Each governmental body shall inventory and report to the Office of General Services designated board office all surplus personal property not in actual public use held by that agency governmental body for sale. The Office of General Services designated board office shall deposit the proceeds from such the sales, less expense of the sales, in the state general fund or as otherwise directed by regulation. This policy and procedure shall apply applies to all governmental bodies unless exempt by law.”

SECTION 52. Section 11-35-3840 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-3840. The Office of General Services of the State Budget and Control Board may license for public sale publications and, including South Carolina Business Opportunities, materials pertaining to training programs, and information technology products which that are developed during the normal course of the Office’s board’s activities. Such The items shall must be licensed at such reasonable costs as are established in accordance with the cost of the items. All proceeds from the sale
of the publications and materials shall must be placed in a revenue
account and expended for the cost of providing such the services.”

SECTION 53. Section 11-35-4210 of the 1976 Code, as last
amended by Act 153 of 1997, is further amended to read:

“Section 11-35-4210. (1) Right to Protest; Exclusive Remedy.
   (a) Any A prospective bidder, offeror, contractor, or
   subcontractor who is aggrieved in connection with the solicitation
   of a contract shall protest to the appropriate chief procurement
   officer in the manner stated in subsection (2)(a) below within
   fifteen days of the date of issuance of the Invitation For Bids or
   Requests for Proposals or other solicitation documents, whichever
   is applicable, or any amendment thereto to it, if the amendment is
   at issue. An Invitation for Bids or Request for Proposals or other
   solicitation document, not including an amendment to it, is
   considered to have been issued on the date required notice of the
   issuance is given in accordance with this code.
   (b) Any actual bidder, offeror, contractor, or subcontractor
   who is aggrieved in connection with the intended award or award
   of a contract shall protest to the appropriate chief procurement
   officer in the manner stated in subsection (2)(b) below within
   fifteen ten days of the date award or notification of intent to award,
   whichever is earlier, is posted in accordance with this code; except
   that a matter that could have been raised pursuant to (a) as a protest
   of the solicitation may not be raised as a protest of the award or
   intended award of a contract.
   (c) The rights and remedies granted in this article to a
   disappointed bidder, offeror, contractor, or subcontractor bidders,
   offerors, contractors, or subcontractors, either actual or
   prospective, are to the exclusion of all other rights and remedies of
   such disappointed bidder, offeror, contractor, or subcontractor the
   bidders, offerors, contractors, or subcontractors against the State at
   common law or otherwise for the loss or potential loss of an award
   of a contract under the South Carolina Consolidated Procurement
   Code.
   (d) The rights and remedies granted by subsection (1) and
   Section 11-35-4410(1)(b) are not available for contracts with an
   actual or potential value of up to fifty thousand dollars.

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

(b) A protest pursuant to subsection (1)(b) must be in writing and must be received by the appropriate chief procurement officer within the time limits established by subsection (1)(b). At any time after filing a protest, but no later than fifteen days after the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code, a protestant may amend a protest that was first submitted within the time limits established by subsection (1)(b). A protest, including amendments, must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

(3) Duty and Authority to Attempt to Settle Protests. Prior to commencement of an administrative review as provided in subsection (4), the appropriate chief procurement officer, the head of the purchasing agency, or their designees thereof may attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The appropriate chief procurement officer, the head of the purchasing agency, or designees thereof shall have the authority to approve any settlement reached by mutual agreement.

(4) Administrative Review and Decision. If in the opinion of the appropriate chief procurement officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the appropriate chief procurement officer shall promptly conduct an administrative review. The appropriate chief procurement officer or his designee shall commence the administrative review no later than fifteen business days after the deadline for receipt of a protest has expired and shall issue a decision in writing within ten days of completion of the review. The decision must state the reasons for the action taken.

(5) Notice of Decision. A copy of the decision under subsection (4) of this section along with a statement of appeal rights pursuant to Section 11-35-4210(6) shall be mailed or otherwise furnished immediately to the protestant and any other party intervening. The appropriate chief procurement officer, or his designee, shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and the posted decision shall indicate the date of posting on its face and shall be
accompanied by a statement of the right to appeal provided in Section 11-35-4210(6).

(6) Finality of Decision. A decision under Section (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of posting of the decision in accordance with Section 11-35-4210 subsection (5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

(7) Automatic Stay of Procurement During Protests. In the event of a timely protest under subsection (1) above, the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is rendered by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel; provided, however, except that solicitation or award of a protested contract will not be stayed if the appropriate chief procurement officer, after consultation with the head of the using agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the State.

(8) Notice of Chief Procurement Officer Address. Notice of the address of the appropriate chief procurement officer must be included in every notice of an intended award and in every invitation for bids, request for proposals, or other type solicitation.”

SECTION 54. Section 11-35-4220 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-4220. (1) Authority. After reasonable notice to the person or firm involved, and a reasonable opportunity for such person or firm to be heard, the appropriate chief
procurement officer shall have the authority to debar a person for cause from consideration for award of contracts or subcontracts provided that if doing so is in the best interest of the State and there is probable cause for debarment. The appropriate chief procurement officer may also suspend a person or firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment. The period of debarment or suspension shall be as prescribed by the appropriate chief procurement officer.

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

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

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

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

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

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

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

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

(f) any other cause the appropriate chief procurement officer determines to be so serious and compelling as to affect responsibility as a state contractor or subcontractor, including debarment by another governmental entity for any cause listed herein in this subsection.
(3) Decision. The appropriate chief procurement officer shall issue a written decision to debar or suspend within ten days of the completion of his administrative review of the matter. The decision shall state the action taken, the specific reasons therefore for it, and the period of debarment or suspension, if any.

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

(5) Finality of Decision. A decision under subsection (3) of this section shall be is final and conclusive, unless fraudulent, or unless the debarred or suspended person requests further administrative review by the Procurement Review Panel under Section 11-35-4410(1), within ten days of the posting of the decision in accordance with Section 11-35-4220(4). The request for review shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body must have the opportunity to participate fully in any review or appeal, administrative or legal.

(6) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organization elements, or commodities. The debarring official may extend the debarment decision to include any principals and affiliates of the contractor if they are specifically named and given written notice of the proposed debarment and an opportunity to respond. For purposes of this section, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indications of
control include, but are not limited to, interlocking management or
ownership, identity of interests among family members, shared
facilities and equipment, common use of employees, or a business
entity organized following the debarment, suspension, or proposed
debarment of a contractor which has the same or similar
management, ownership, or principal employees as the contractor
that was debarred, suspended, or proposed for debarment. For
purposes of this section, the term ‘principals’ means officers,
directors, owners, partners, and persons having primary
management or supervisory responsibilities within a business
entity including, but not limited to, a general manager, plant
manager, head of a subsidiary, division, or business segment, and
similar positions.”

SECTION 55. Section 11-35-4230 of the 1976 Code, as last
amended by Act 153 of 1997, is further amended to read:

“Section 11-35-4230. (1) Applicab ility. This section applies to
controversies between the State a governmental body and a
contractor or subcontractor, when the subcontractor is the real
party in interest, which arise under or by virtue of a contract
between them including, but not limited to, controversies based
upon breach of contract, mistake, misrepresentation, or other cause
for contract modification or rescission. The procedure set forth in
this section shall constitute the exclusive means of
resolving a controversy between the State a governmental body
and a contractor or subcontractor, when the subcontractor is the
real party in interest, concerning a contract solicited and awarded
under pursuant to the provisions of the South Carolina
Consolidated Procurement Code.

(2) Request for Resolution; Time for Filing. Either the
contracting state agency or the contractor or subcontractor, when
the subcontractor is the real party in interest, may initiate
resolution proceedings before the appropriate chief procurement
officer by submitting a request for resolution to the appropriate
chief procurement officer in writing setting forth the general
specific nature of the controversy and the specific relief requested
with enough particularity to give notice of the issues every issue to
be decided. A request for resolution of contract controversy must
be filed within one year of the date the contractor last performs
work under the contract; provided, however, except that in the
case of latent defects a request for resolution of a contract
controversy must be filed within one year three years of the date
the requesting party first knows or should know of the grounds giving rise to the request for resolution.

(3) Duty and Authority to Attempt to Settle Contract Controversies. Prior to commencement of an administrative review as provided in subsection (4), the appropriate chief procurement officer or his designee shall attempt to settle by mutual agreement a contract controversy brought under this section. The appropriate chief procurement officer shall have the authority to approve any settlement reached by mutual agreement.

(4) Administrative Review and Decision. If, in the opinion of the appropriate chief procurement officer, after reasonable attempt, a contract controversy cannot be settled by mutual agreement, the appropriate chief procurement officer or his designee shall promptly conduct an administrative review and shall issue a decision in writing within ten days of completion of the review. The decision shall state the reasons for the action taken.

(5) Notice of Decision. A copy of the decision under subsection (4) of this section and a statement of appeal rights under Section 11-35-4230(6) shall be mailed or otherwise furnished immediately to all parties participating in the administrative review proceedings. The appropriate chief procurement officer also shall post a copy of the decision at a time and place communicated to all parties participating in the administrative review, and such the posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section 11-35-4230(6).

(6) Finality of Decision. A decision under pursuant to subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and shall be in writing setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body shall have the
opportunity to participate fully in a later review or appeal, administrative or legal.”

SECTION 56. Section 11-35-4330 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-4330. (1) Signature on Protest Constitutes Certificate. The signature of an attorney or party on a request for review, protest, motion, or other document constitutes a certificate by the signer that the signer has read such the document, that to the best of the signer’s knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation.

(2) Sanctions for Violations. If a request for review, protest, pleading, motion, or other document that is filed with the chief procurement officer or the Procurement Review Panel is signed in violation of this subsection on or after appeal to the Procurement Review Panel, the Procurement Review Panel, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion, or other paper, including a reasonable attorney’s fee.

(3) Filing. A motion regarding a matter that is not otherwise before the panel may not be filed until after a final decision has been issued by the appropriate chief procurement officer. A motion for sanctions pursuant to this section must be filed with the panel no later than fifteen days after the later of either the filing of a request for review, protest, motion, or other document signed in violation of this section, or the issuance of an order that addresses the request for review, protest, motion, or other document that is the subject of the motion for sanctions.”

SECTION 57. Section 11-35-4410 of the 1976 Code, as last amended by Act 178 of 1993, is further amended to read:
“Section 11-35-4410. (1) Creation. There is hereby created the
South Carolina Procurement Review Panel which is charged with the responsibility to review and determine de novo:
(a) requests for review of written determinations of the chief
procurement officers under Sections 11-35-4210(6),
11-35-4220(5), and 11-35-4230(6); and
(b) requests for review of other written determinations,
decisions, policies, and procedures as arise from or concern the
procurement of supplies, services, information technology, or
construction procured in accordance with the provisions of this
code and the ensuing regulations; provided that any matter which could have been brought before the chief
procurement officers in a timely and appropriate manner under
pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but
was not, shall not be the subject of review under this
paragraph. Requests for review under this paragraph shall be
submitted to the Procurement Review Panel in writing, setting
forth the grounds, within fifteen days of the date of such the
written determinations, decisions, policies, and procedures.
(2) Membership. The panel must be composed of:
(a) [Deleted]
(b) [Deleted]
(c) [Deleted]
(d) the chairman, or his designee, of the Procurement Policy
Committee; [Deleted]
(e) five members appointed by the Governor from the State
at large who must be representative of the professions
governed by this title including, but not limited to:
(i) goods and services;
(ii) information technology procurements;
(iii) construction;
(iv) architects and engineers;
(v) construction management; and
(vi) land surveying services;
(f) two state employees appointed by the Governor.
(3) Chairperson and Meetings. The panel shall elect a
chairman from the members at large and shall meet as often as
necessary to afford a swift resolution of the controversies
submitted to it. Five Four members present and voting shall
constitute a quorum. In the case of a tie vote, the decision of the
chief procurement office is final. At-large members of the panel
shall must be paid per diem, mileage, and subsistence as provided
by law for members of boards, commissions, and committees.
State employee members shall be reimbursed for meals, lodging, and travel in accordance with current state allowances.

(4) Jurisdiction. (a) Notwithstanding the provisions of Section 1-23-10, et seq., or any other provisions of law, the Administrative Procedures Act does not apply to administrative reviews conducted by either a chief procurement officer or the Procurement Review Panel. The Procurement Review Panel shall be vested with the authority to:

(a)(i) establish its own rules and procedures for the conduct of its business and the holding of its hearings;
(b)(ii) issue subpoenas;
(c)(iii) interview any person it deems necessary; and
(d)(iv) record all determinations.

(b) A party aggrieved by a subpoena issued pursuant to this provision shall apply to the panel for relief.

(5) Procedure. Within fifteen days of receiving a grievance filed under Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6), or 11-35-4410(1)(b), the chairman shall either convene the review panel to conduct an administrative review or schedule a hearing to facilitate its administrative review. Except for grievances filed pursuant to Section 11-35-4230(6), the review panel shall record its determination within thirty working days and shall communicate its decision to those involved in the determination. In matters designated by the review panel as complex, the review panel shall record its determination within thirty days. In the alternative, the chairman, within ten days, may appoint a hearing officer to conduct the administrative review and report his recommendations to the review panel for its determination. If a hearing officer is appointed, his report shall be submitted to the review panel within ten days after his appointment, and the review panel must still record its decision within thirty days after being convened for this purpose.

(6) Finality. The decision of the Procurement Review Panel is final as to administrative review and may be appealed to the circuit court under the provisions of the South Carolina Administrative Procedures Act. The filing of an appeal does not automatically stay a decision of the panel.”

SECTION 58. Section 11-35-5220 of the 1976 Code is amended by adding:
“(6) Fee Waivers. Upon request by an MBE certified by the Small and Minority Business Assistance Office, user or subscription fees for services provided by the chief procurement officers may be waived for an MBE.”

SECTION 59. Section 11-35-5230(A)(5) and (B)(2) of the 1976 Code, as last amended by Act 76 of 1995, is further amended to read:

“(5) Ensuring that the price shall have been determined to be fair and reasonable, and competitive both to the State and to the contractor and results in no loss to the State.

(2) The tax credit is limited to a maximum of twenty-five thousand dollars annually. A firm shall be eligible to claim a tax credit for a period of ten years from the date the first income tax credit is claimed.”

SECTION 60. Section 11-35-5240 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-5240. (1) In order to emphasize the use of minority small businesses, each agency director shall develop a Minority Business Enterprise (MBE) Utilization Plan. The MBE Utilization Plan shall include, but not be limited to:

(a) the name of the governmental body;

(b) a policy statement expressing a commitment by the governmental body to use MBE’s in all aspects of procurement;

(c) the name of the coordinator responsible for monitoring the MBE Utilization Plan;

(d) goals that include a reasonable percentage of Minority Business Enterprises certified by the Office of Small and Minority Business Assistance an amount equal to ten percent of each governmental body’s total procurements directed toward minority vendors dollar amount of funds expended;

(e) solicitation of qualified minority vendors, a current list of which shall must be supplied by the Office of General Services Small and Minority Business Assistance, in each commodity category for which the minority vendor is qualified. The current listing of qualified minority vendors shall must be made available by the Office of General Services Small and Minority Business Assistance on a timely basis;
(f) procedures to be used when it is necessary to divide total project requirements into smaller tasks which will permit increased MBE participation;

(g) procedures to be used when the governmental body subcontracts the scope of service to another governmental body; the responsible governmental body may set goals for the subcontractor in accordance with the MBE goal and the responsible governmental body may allow the subcontractor to present a MBE Utilization Plan detailing its procedure to obtain minority business enterprise participation.

(2) MBE utilization plans shall must be submitted to the SMBAO for approval not no later than July thirtieth, annually. Upon petition by the governmental body, SMBAO may authorize an MBE utilization plan that establishes a goal of less than ten percent of the governmental body’s total dollar amount of funds expended. Progress reports shall must be submitted to the SMBAO not no later than ten thirty days after the end of each fiscal quarter and contain the following information:

(a) number of minority firms solicited;
(b) number of minority bids received;
(c) total dollar amount of funds expended on contracts awarded to minority firms certified pursuant to Section 11-35-5230; and
(d) total dollar amount of funds expended.

(3) For purposes of this section, and notwithstanding the Administrative Procedures Act, the executive director of the board shall establish a definition for the phrase ‘total dollar amount of funds expended’.

SECTION 61. Section 11-35-5260 of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“Section 11-35-5260. Each governmental body The Small and Minority Business Assistance Office shall report annually in writing to the Governor concerning the number and dollar value of contracts awarded for each governmental body to eligible minority businesses a firm certified as a minority firm pursuant to Section 11-35-5230 during the preceding fiscal year. These records shall must be maintained to evaluate the progress of this program.”

SECTION 62. The final two sentences of Section 11-35-5270 of the 1976 Code are amended to read:

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“The Governor shall evaluate the role of this office within two years from the date of its creation and shall request recommendations of the State Reorganization Commission. The Governor may propose a more appropriate location of the office should the findings warrant change.”

SECTION 63. Section 12-6-3350(B) of the 1976 Code is amended to read:

“(B) The credit is limited to a maximum of twenty-five thousand dollars annually. A taxpayer is eligible to claim the credit for six taxable years beginning with the taxable year in which the credit is first claimed. After the above six taxable years, the taxpayer is no longer eligible for the credit regardless of whether or not the taxpayer claimed the credit in a year subsequent to the year in which the credit was first claimed.”

SECTION 64. Subarticle 11 of Article 1, Chapter 35, Title 11; Section 11-35-1270; and Subarticle 5 of Article 15, Chapter 35, Title 11 of the 1976 Code are repealed.

SECTION 65. This act takes effect upon approval by the Governor.


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