

MANUAL FOR PLANNING AND EXECUTION OF STATE PERMANENT IMPROVEMENTS PART II

**DIVISION OF PROCUREMENT SERVICES
OFFICE OF STATE ENGINEER**

2016 EDITION

OFFICE OF STATE ENGINEER

MANUAL FOR PLANNING AND EXECUTION OF STATE PERMANENT IMPROVEMENTS

PART II - 2016 EDITION

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- Prequalification Handbook for Construction Bidding
- Certificate of Independent Price Determination
- Guide to Bid, Payment, and Performance Bonds
- Web Site Verification for Surety Companies (Rev 06-06-12)

CHAPTER 1

GENERAL INFORMATION

1.1 RELATED STATUTORY AND REGULATORY AUTHORITY

- 1.1.1** SC Code § 2-47-50 requires the State Fiscal Accountability Authority (SFAA) to establish permanent improvement projects prior to an agency taking any action to implement the project or to expend any funds, except for advertising and interviewing for architectural and engineering services.
- 1.1.2** SC Code § 2-47-56 sets approval requirements for gifts-in-kind for architectural and engineering services and construction.
- 1.1.3** SC Code § 6-29-770 subjects state agencies, departments, and subdivisions to local zoning ordinances.
- 1.1.4** SC Code § 6-9-110 exempts state property from local ordinances that require permits, licenses or other devices as means of enforcing building standards.
- 1.1.5** SC Code § 6-9-110 provides for the training and certification of OSE staff as Deputy State Fire Marshals.
- 1.1.6** SC Code § 10-1-180 provides that all construction, improvement, and renovation of state buildings must comply with all applicable Building Code standards as specified in the Manual for Planning and Execution of State Permanent Improvements - Part II.
- 1.1.7** SC Code § 11-35-410 provides that any person may inspect or copy public records after an award, except as exempted by SC Code § 30-4-40. Normally a procurement file is considered a public record,-except for that portion of the submittal which at the time of the submission was marked as confidential.
- 1.1.8** SC Code § 11-35-510 vests all rights, powers, duties, and authority relating to centralization of materials management with the Chief Procurement Officers. This section transfers this authority from all other governmental bodies to the Chief Procurement Officers, regardless of the source of funds. This authority is subject to specific listed exceptions.
- 1.1.9** SC Code § 11-35-540 permits the SFAA to promulgate regulations, to approve agencies internal operational procedures for procurement, and to audit and monitor agencies procurement procedures.
- 1.1.10** SC Code § 11-35-710 provides that the SFAA may exempt specific purchases from the Procurement Code.
- 1.1.11** SC Code §§ 11-35-810, 820, and 830 create respectively the Office of Materials Management, the Office of Information Technology Management, and the Office of State Engineer.
- 1.1.12** SC Code §§ 11-35-1520, 1530 and 3020 requires that procurements of design and construction services valued at more than \$50,000 be advertised in “South Carolina Business Opportunities” or a means of central electronic advertising approved by the designated SFAA office.
- 1.1.13** SC Code § 11-35-4210 provides protest rights to certain individuals and permits the Chief Procurement Officer to attempt to resolve protested solicitations and awards.
- 1.1.14** SC Code § 11-35-4220 permits the Chief Procurement Officer to suspend or debar a person or firm from consideration for award of contracts.
- 1.1.15** SC Code § 11-35-4230 permits the Chief Procurement Officer to attempt to resolve contract and breach of contract controversies.
- 1.1.16** SC Code § 11-35-4410 establishes the South Carolina Procurement Review Panel as the final administrative review for all decisions by the Chief Procurement Officers.
- 1.1.17** SC Regulation 19-445.2015 sets forth the procedure for termination or ratification of unauthorized procurements.
- 1.1.18** SC Regulation 19-446 sets the requirements for persons representing clients in contract disputes and other proceedings before the Chief Procurement Officer for Construction.
- 1.1.19** SC Regulation 19-445.2010 requires that when an Agency receives a written request for procurement information from an actual offeror prior to contract award (after bid opening but before end of protest period), the Agency must make such information (excluding confidential and exempt information), available for inspection within 10 days.

1.2 ROLE OF THE STATE ENGINEER AND OFFICE OF THE STATE ENGINEER (OSE)

(SC Code Ann § 6-9-110, § 10-1-180, § 11-35-510, and Governor's Executive Order No. 82-19)

The State Engineer and OSE's primary role is to assist the Agency to procure design and construction in the manner best suited to the Agency's needs. The State Engineer is responsible to assure that all such procurements comply with state law. The State Engineer, as the Building Official and Deputy State Fire Marshal for construction of state buildings and facilities, is responsible to assure all such construction provides a safe environment for all occupants. Finally, the State Engineer serves as the administrator of the State-level Floodplain Management Program for State lands.

1.3 PURPOSE OF THIS MANUAL *(SC Code Ann § 11-35-830)*

1.3.1 The SC Consolidated Procurement Code and other Statutory Provisions require OSE to prepare and maintain the Manual for Planning & Execution of State Permanent Improvements. According to Section 11-35-830, all procurements involving construction and construction-related design services, including any pre- and post-procurement activities in this area, must be conducted in accordance with the Manual for Planning and Execution of State Permanent Improvements, Part II. As provided by Regulation 19-445.2145(F), Part II of this manual is the responsibility of the Office of the State Engineer. In his sole discretion, the State Engineer reserves the right to excuse compliance with part or all of this manual (except where it simply restates the law). Any such authority will be in writing and will be provided only in very limited circumstances.

1.3.2 While OSE has prepared this Manual to comply with the law, OSE hopes agencies will view this Manual as an aid in the construction process. This Manual, we believe, will provide the Agency with an understanding of the requirements of state procurement law, assistance in procuring design and construction in compliance with that law, assistance with complying with state law regarding building codes, and assistance with managing their construction projects. The Manual is posted on OSE's Web Site at <http://procurement.sc.gov/PS/agency/PS-ose-manual-2016.phtm>.

1.4 ORGANIZATION

1.4.1 OSE has organized this manual to flow as closely as possible in the order of the construction process; however, the order and title of Chapters is not intended to emphasize one project delivery method over another. As indicated in Chapter 3, the nature of a project will control which project delivery method is best for that project.

1.4.2 Each chapter provides assistance with various stages of the construction project. At the back of the manual is a glossary of terms used throughout the manual and appendices providing additional information such as standard modifications to contracts and forms referenced in the Manual.

1.5 KEY DEFINITIONS *(SC Code Ann § 11-35-310)*

1.5.1 "Construction" is the process of building, altering, repairing, remodeling, improving, or demolishing any structure, building, or other improvements of any kind on any public real property. It does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property. S.C. Code Ann. § 11-35-2910(2)

1.5.2 "Agency" is the "Governmental Body" procuring design or construction.

1.5.3 "Governmental Body" is a state government department, commission, council, board, bureau, committee, institution, public college, university, technical school, Agency, government corporation, or other establishment or official of the executive or judicial branch. S.C. Code Ann. § 11-35-310(18)

1.6 AGENCY RESPONSIBILITIES

1.6.1 Each Agency is responsible for its construction-contracting program.

A. The Agency must determine the necessity for design or construction services;

B. The Agency must secure project funding; and

C. The Agency must comply with State and Federal laws, regulations, and procedures in procuring and administering construction.

1.6.2 Service Level Agreements (SLA)

A. With every PIP that is established after April 4, 2016, the Agency must complete and sign a Service Level Agreement for the appropriate method of project delivery with the OSE project manager assigned to that project.

- B. The purpose of this SLA is to establish milestones and deliverables for each anticipated activity in the project development and procurement process for the state project.
- C. Both Parties agree to abide by the scheduled timeframe. If the timeframe is not adhered to, then a new schedule must be mutually agreed upon and implemented.
- D. If the agency fails to meet timeframes set, the job may be delayed as it will have to be rescheduled according to the OSE Project Manager's available time.
- E. SLA's for Design-Bid-Build, Construction Management at Risk and Design-Build (DBx) can be found in Appendix C of this manual.

1.7 GENERAL PROCUREMENT INFORMATION

1.7.1 Chief Procurement Officers – Authority and Delegation of Authority

(SC Code Ann § 11-35-310(5), § 11-35-510, § 11-35-710, and § 11-35-835)

- A. South Carolina Law establishes three Chief Procurement Officers, the State Engineer (SE), the Materials Management Officer (MMO), and the Information Technology Management Officer (ITMO). Collectively, the Chief Procurement Officers have the authority and responsibility for all state procurement. The only exceptions are when the General Assembly or the SFAA exempts or otherwise transfers specific authority to others. Procurement responsibilities of the Chief Procurement Officers are as follows:

<u>CATEGORY</u>	<u>SE</u>	<u>MMO</u>	<u>ITMO</u>
1. Construction-Related Professional Services	X		
2. Construction, over Agency Certification	X		
3. Repair, \$50,000 or greater and over Agency Certification		X	
4. Maintenance, over Agency Certification		X	
5. Operation, over Agency Certification		X	
6. Goods and Services, over Agency Certification		X	
7. Data Processing, over Agency Certification			X
8. Telecommunications, over Agency Certification			X
9. Office System Technology, over Agency Certification			X
10. Information Technology Services, over Agency Certification			X

NOTE: See the Glossary for definitions of these categories.

- B. Each Agency has the authority to conduct construction procurements up to and including \$50,000. Such procurements are subject to the requirements of the Procurement Code and applicable requirements of this Manual. The SFAA may grant an Agency a higher construction certification limit as discussed in Chapter 3.
- C. Upon the recommendation of the designated SFAA office, the SFAA may exempt governmental bodies from purchasing certain items through the respective chief procurement officer's area of responsibility. The Audit and Certification Group maintains current listings of all exemptions and certifications, which are available through the MMO Web site (<http://www.mmo.sc.gov/PS/agency/PS-agency-cert-limits.phtml>) or by contacting the Audit and Certification Group.

1.7.2 Advertising of Design and Construction Procurements

(SC Code Ann § 11-35-1520(3), § 11-35-1530(2), § 11-35-3220(2)(b), and Reg. 19-445.2040)

- A. Chapters 4 and 6 of this Manual describe the minimum requirements for advertising procurements for professional services and construction. The Agency must publish all advertisements required by this Manual in South Carolina Business Opportunities (SCBO). The Materials Management Office publishes SCBO. To improve competition, Agencies may also advertise in other media, but such advertisements are not legal advertisements that meet the public notice requirements of the Procurement Code.

- B. SCBO is available on the MMO Web site (<http://www.mmo.sc.gov/PS/general/scbo/PS-scbo-index.phtml>). SCBO is published daily Monday – Friday. For projects required to be approved by OSE, the submittal schedule is:

Forms Received by OSE for Review By:	Are Published in SCBO:
5:00 pm on any day	Up to 2 business days later
EXAMPLE: Forms received by OSE no later than 5:00 pm on Tuesday will be published that Thursday; or, forms received by OSE no later than 5:00 pm on Friday will be published the following Tuesday.	

NOTE: All forms used to advertise in SCBO must be submitted to OSE in **Word** format.

1.7.3 Permanent Improvement Project (PIP) (SC Code Ann § 2-47-50)

- A. For the definition of a Permanent Improvement Project (PIP), Agencies should consult the Manual for Planning and Execution of State Permanent Improvements - Part I (Manual Part I). The Agency may find the Manual Part I at <http://www.admin.sc.gov/budget/capital-budgeting-unit/manual> or by contacting the Capital Budgeting Unit in the Office of State Budget. The Manual Part I defines the process for establishing a PIP. The SFAA documents its approval of a PIP on a Form A-1. Form A-1 is available in Appendix A to the Manual Part I or is available from the Capital Budgeting Unit. Agencies should direct questions on procedures related to the PIP process to the Capital Budgeting Unit.
- B. An Agency may not implement a PIP until the SFAA has approved a Form A-1. However, if the Agency expects a project to result in a PIP, the Agency may advertise and interview for architectural and engineering (A/E) services and negotiate a proposed contract before SFAA approval of a Form A-1. The Agency may not award a contract for A/E services on a PIP and the A/E may not perform any work until the SFAA approves a Form A-1.

1.7.4 Non-Permanent Improvement Project (Non-PIP)

A Non-Permanent Improvement Project is a construction project that does not meet the definition of a PIP as contained in the Manual Part I. If an Agency begins a construction project that does not meet the PIP definition, but it subsequently qualifies as a PIP, the Agency must seek to establish the project as a PIP by submitting a Form A-1 to the Capital Budgeting Unit as soon as they know that the project qualifies as a PIP.

1.7.5 Project Numbering

- A. OSE gives each project under its jurisdiction a unique project number. The Agency needs to assure that this number appears on all documents and correspondence associated with the project. OSE's project number format is as follows:

1. Permanent Improvement Project Number

H59	9659	PD	B1
Agency Number	PIP Number (assigned by Capital Budgeting)	OSE PM (assigned by OSE)	Project Phase (optional)

2. Non-Permanent Improvement Project Number

H12	N046	MJ	C
Agency Number	Non-PIP Number (assigned by OSE)	OSE PM (assigned by OSE)	Project Phase (optional)

3. Indefinite Delivery Contract Project Number

H75	D015	SG	A
Agency Number	IDC Number (assigned by OSE)	OSE PM (assigned by OSE)	Multiple Contract Award Identification (if needed)

NOTE: When an IDC project is using the Low Bid of a Representative Project method for selecting the IDC contractors, the representative project plans and specifications shall include both the IDC project number (as shown above) and the Delivery Order project number through which the representative project is intended to be awarded (PIP or Non-PIP). The IDC number above is only to be used in referencing the selection of the A/E or Contractor and not to be used specifically as the project number of the representative project or other Delivery Orders.

- B. OSE uses Project Phases (up to two alphanumeric characters) to identify smaller elements of a large project when an Agency plans to award separate design and construction contracts for those smaller elements.

1.7.6 Types of Construction Procurements (*SC Code Ann § 11-35-3015*)

The Procurement Code allows the following methods of construction procurement:

- A. Competitive Sealed Bidding - Chapter 6 of this Manual;
- B. Competitive Sealed Proposals - Chapter 11.1 or 12.1 (depending on project delivery method) of this Manual;
- C. Small Procurements – Chapter 8 of this Manual.
- D. Emergency Procurements – Chapter 8 of this Manual.
- E. Sole Source Procurements – Chapter 8 of this Manual.
- F. Qualification based selection of architect-engineer and land surveying services – Chapter 4 of this Manual.

1.7.7 Types of Project Delivery Methods (*SC Code Ann § 11-35-3005*)

- A. Design-Bid-Build – SC Code Ann § 11-35-2910(6) & Chapter 6 of the Manual
- B. Construction Management at Risk - SC Code Ann § 11-35-2910(5) & Chapter 11 of this Manual
- C. Design-Build - SC Code Ann § 11-35-2910(7) & Chapter 12 of this Manual
- D. Design-Build-Operate-Maintain – SC Code Ann § 11-35-2910(9) & Chapter 11 of this Manual;
- E. Design-Build-Finance-Operate-Maintain – SC Code Ann § 11-35-2910(8) & Chapter 11 of this Manual;
- F. Operations and Maintenance - SC Code Ann § 11-35-2910(13).

1.8 UNAUTHORIZED PROCUREMENTS

- 1.8.1** The SFAA may prescribe administrative penalties for violations of the Procurement Code and Regulations. The SFAA may revoke or reduce procurement authority for violation of these provisions.
- 1.8.2** Agencies must terminate contracts for procurements made in violation of the Procurement Code unless an authorized individual determines in writing that the contract is in the best interest of the state. See SC Regulation 19-455.2015 for details on terminating or ratifying such procurements.

1.9 RELATIONSHIP BETWEEN LOCAL OFFICIALS AND STATE AGENCIES

1.9.1 Local Ordinances and Regulations (*SC Code Ann. § 6-9-110(A) & § 10-1-180*)

Local ordinances or regulations that require the purchase or acquisition of a permit utilized to enforce building codes and standards do not apply to state construction projects. The State Engineer determines the enforcement and interpretation of all applicable building codes and standards on state buildings. Local officials may comment on the application of building codes to state buildings through the State Engineer but may not delay construction or delay or deny water, sewer, power or other utilities, or firefighting services.

1.9.2 State Fire Marshal (*SC Code Ann. § 6-9-110(B)*)

Certified Personnel of the OSE and deputy state fire marshals (including resident state fire marshals) have exclusive jurisdiction over state buildings in the exercise of the State Fire Marshal's powers and jurisdictional authority.

1.9.3 Local Zoning Ordinances (*SC Code Ann. § 6-29-770 & § 6-29-770(E)*)

State agencies are subject to local zoning ordinances. However, local zoning ordinances do not apply to homes serving nine or fewer mentally or physically handicapped persons provided they provide care on a twenty-four hour basis and provides a binding procedure for working with local government authorities to select a site for such homes.

1.10 FREEDOM OF INFORMATION ACT AND TRADE SECRETS ACT

(*SC Code Ann. §§ 30-4-10 through 110 & §§ 39-8-10 through 130*)

- 1.10.1** The following generally describes some of the applicable requirements of the FOIA but is not a complete review of the requirements of either FOIA or the Trade Secrets Act.
- 1.10.2** Each Agency is responsible for its compliance with the South Carolina Freedom of Information Act and the South Carolina Trade Secrets Act. Each Agency is also responsible for the development and enforcement of internal policies and procedures to ensure compliance.

- 1.10.3** Except as exempted by §30-4-40, any person may inspect or copy public records after an award. The following specifically applies to procurements:
- A.** Normally, a public procurement file is a public record subject to public viewing.
 - B.** Until the Agency posts an SE-370, Notice of Intent to Award, only the information disclosed by the Agency's procurement officer or his designee at the opening of sealed bids is public information.
 - C.** In the case of professional services procurements, the following becomes public information at the time the Agency posts the SE-219, Notification of Selection for Contract Negotiation:
 - 1.** Information related to the Agency's determination of the firms selected for final interview.
 - 2.** Information related to the Agency's determination of the final ranking of the interviewed firms.
 - D.** Material not marked as confidential at the time of submittal is public information.
 - E.** Information relative to the identity of the maker of a gift to a public body must not be disclosed when the maker specifies, as a condition of the gift, that the public body not reveal his/her identity.
 - F.** The public body must separate records containing information that is exempt from disclosure before making the remaining information available to the public.
- 1.10.4** If an actual offeror makes a written request for procurement information prior to the execution of a contract, the Agency must make documents directly related to the procurement activity that are not exempted available for inspection within 10 days of receiving the request. (SC Reg. 19 445.2010) In all other cases, if a person makes a written FOIA request to the Agency, the Agency must provide that person written notification as to public availability of the records within 15 days (excluding Saturday, Sundays and legal holidays) of receiving the request.
- 1.10.5** Any person that violates the provisions of FOIA is guilty of a misdemeanor and subject to the penalties listed in SC Code Ann. §30-4-110.

1.11 LEGAL REMEDIES FOR SOLICITATIONS AND AWARDS (SC Code § 11-35-4210 & 11-35-4410)

When an agency solicits a bid or proposal in excess of \$50,000 or awards a contract in excess of \$50,000, the procurement code provides aggrieved persons who have standing the right to protest.

1.11.1 Protesting a Contract Solicitation

A. Who can protest?

Any prospective bidder, offeror, contractor, or subcontractor may protest a contract solicitation.

B. What is the deadline for protesting?

Protestant must protest within fifteen days of the date of the Invitation for Bids, Request for Proposal, Solicitation, or Amendment, if the amendment is at issue. The State Engineer must receive the protest by 5 PM of the fifteenth day. If the fifteenth day falls on a weekend or a holiday, the State Engineer must receive the protest by 5 PM of the next business day.

C. How does someone submit a protest?

A protestant must submit a written protest to the State Engineer. Protestor may submit a protest by letter, facsimile, or e-mail.

Mailing Address: State Engineer
1201 Main Street Suite 600
Columbia, SC 29201

Facsimile No.: 803-737-0639

E-mail Address: protest-ose@mmo.sc.gov

D. What information should the protestant provide in the written protest?

The protestor must:

- 1.** Set forth the specific nature of the controversy;
- 2.** Set forth the specific relief requested; and
- 3.** Provide sufficient details for the State Engineer and any other interested party to have notice of every issue the protestor wants the State Engineer to decide.

1.11.2 Protesting a Contract Award:**A. Who can protest?**

Any actual bidder, offeror, contractor, or subcontractor may protest a contract award. Definitions of the words “contractor” and “subcontractor” are located at SC Code Ann § 11-35-310.

B. What is the deadline for protesting?

Protestant must protest within ten days of the date of posting of Notice of Award. The State Engineer must receive the protest by 5 PM of the tenth day. If the tenth day falls on a weekend or a holiday, the State Engineer must receive the protest by 5 PM of the next business day. The protestant may amend his/her protest at any time before 5 PM of the fifteenth day after the posting of Notice of Award.

C. How does someone submit a protest?

See 1.11.1.C above.

D. What information should the protestant provide in the written protest?

See 1.11.1.D above.

1.11.3 Resolution Process for Protests

- A.** The Agency must first attempt to resolve all protests by mutual written agreement between the aggrieved parties. The OSE Project Managers are available to assist.
- B.** If the efforts at mediation fail to resolve the protest, the State Engineer will conduct an administrative review of the issues raised by the protestant and issue a written decision. The administrative review process may include a formal hearing. More information on the administrative review process is available through the MMO legal counsel’s Web site (<http://www.mmo.sc.gov/PS/legal/PS-legal-general-info.phtml>).
- C.** Unless a person adversely affected by the State Engineer’s decision files an appeal with the Procurement Review Panel, the Agency may award the contract on the eleventh day after the State Engineer posts his decision.

1.11.4 Appeals to the Procurement Review Panel

- A.** Any person adversely affected by the decision of the State Engineer may appeal that decision to the South Carolina Procurement Review Panel (Panel) within 10 days from the posting of the decision.
- B.** The appellant should address the appeal to the State Engineer as set forth above. The appellant must submit with his/her appeal a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel.
- C.** In order to prosecute an appeal before the Panel, the appellant must retain an attorney.

1.11.5 Stay of Procurement During Protests

When a prospective bidder or offeror protests a solicitation to the State Engineer, the Agency may not proceed with the procurement or enter into a contract until the protest is resolved; EXCEPT, the State Engineer, upon written request by the head of the Agency, may determine in writing that it is necessary, and in the best interest of the State, to allow the contract award process to continue pending resolution of the protest.

1.12 LEGAL REMEDIES FOR CONTRACT CONTROVERSIES (SC Code § 11-35-4230 & § 11-35-4410)**1.12.1 General**

- A.** In the event of a contract dispute between the Agency and one of its contractors or subcontractors, the Agency must first attempt to resolve the dispute without resort to further action. The OSE Project Managers are available to assist the Agency in resolving any dispute.
- B.** If the parties cannot resolve their dispute, either party may file a request for resolution of the dispute with the State Engineer. A party cannot seek redress in the courts without going through the following resolution process.

1.12.2 Filing a Request for Resolution of a Dispute or Controversy (Request for Resolution)**A. Who can file a request for resolution?**

The contracting Agency, contractor, or a subcontractor, when the subcontractor is the real party in interest, may file a written Request for Resolution of a contract controversy with the State Engineer. For the purposes of resolving contract controversies, the terms “contractor” and “subcontractor” include prime design professionals and their first tier consultants.

B. What is the deadline for filing a request for resolution?

The requesting party must file his/her request within one year of the date the contractor last performed work under the contract, unless the basis for the claim is a latent defect. In the case of claims for latent defects, the requesting party must file his/her request within three years of the date the requesting party knew or should have known of the defect that is the basis for the claim.

C. How does someone file a request for resolution?

The party filing must submit a written request for resolution to the State Engineer. The party may submit the request by letter, facsimile, or e-mail

Mailing Address: State Engineer
1201 Main Street Suite 600
Columbia, SC 29201

Facsimile No.: 803-737-0639

E-mail Address: protest-ose@mmo.sc.gov

D. What information should the party filing a request for resolution include in the request?

The protestor must:

1. State the general nature of the controversy
2. State the relief requested
3. Provide sufficient details for the State Engineer and any other interested party to have notice of every issue the filing party wants the State Engineer to decide.

1.12.3 Resolution Process for Contract Controversy

- A. Formal mediation is the first step in the process of resolution of a contract controversy. An OSE Project Manager or other mutually agreeable party appointed by the State Engineer will act as the mediator. The parties involved in the controversy must participate in the mediation process.
- B. In the event mediation fails to resolve all the issues in the contract controversy, the State Engineer will conduct an administrative review of the issues raised by the claimant and issue a written decision. The administrative review process may include a formal hearing where the parties have the opportunity to present evidence and testimony, cross-examine witnesses, and submit arguments to support their position. Legal representation is not required for a hearing before the State Engineer.
- C. Each party must supply all proposed exhibits and related information at the administrative hearing along with sufficient copies for all other parties. The State Engineer may direct the parties to exchange exhibit information and witness lists before the hearing.
- D. Each party must furnish sufficient evidence and witnesses to substantiate its claim. Unsupported testimony from the claimant is not sufficient to establish the amount of an award for a requested claim. If the respondent believes the value of a claim is unreasonable, then respondent must present evidence or witnesses to substantiate a different value for the claim.

1.12.4 Appeals to the Procurement Review Panel

- A. Any person adversely affected by the decision of the State Engineer may appeal that decision to the South Carolina Procurement Review Panel (Panel) within 10 days from the posting of the decision.
- B. The appellant should address the appeal to the State Engineer as set forth above. The appellant must submit with his/her appeal a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel.
- C. In order to prosecute an appeal before the Panel, the appellant must retain an attorney.

CHAPTER 2

MINORITY BUSINESSES

2.1 RELATED STATUTORY AUTHORITY

- 2.1.1 SC Code § 11-35-5210 sets forth the General Assembly's intention to assist minority businesses.
- 2.1.2 SC Code § 11-35-5240 requires each agency to develop an MBE Utilization Plan to emphasize the use of minority businesses and to submit quarterly and annual reports on the plan and its implementation.
- 2.1.3 SC Code § 11-35-5250 permits the Chief Procurement Officer to make special provisions for progress payments, letters of credit, and letters of contract award to assist minority businesses in obtaining appropriate credit and otherwise carry out the terms of a state contract.
- 2.1.4 SC Code § 11-35-5270 establishes the Small and Minority Business Assistance Office (SMBAO) to identify and assist responsive minority businesses.
- 2.1.5 SC Code § 12-6-3350 provides for a tax credit for contractors who subcontract with certified South Carolina based small minority businesses.
- 2.1.6 SC Regulation 19-445.2160 requires each agency to maintain records and submit reports to the SMBAO and the SFAA demonstrating implementation of the MBE Utilization Plan.

2.2 STATE POLICY (*SC Code Ann § 11-35-5210*)

The South Carolina General Assembly has declared that business firms owned and operated by minority persons have been historically restricted from full participation in the free enterprise system to a degree disproportionate to other businesses. The General Assembly has further declared that it is in the State's best interest to assist minority-owned businesses to develop fully as a part of the State's policies and programs designed to promote balanced economic and community growth throughout the State. Therefore, it is the State's policy to ensure that agencies afford those businesses owned and operated by minorities the opportunity to fully participate in the overall procurement process of the State.

2.3 DEFINITIONS

SC Regulation 19-455.2160(A) provides definitions for the terms MINORITY PERSON, SOCIALLY DISADVANTAGED, ECONOMICALLY DISADVANTAGED, and SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS.

2.4 MINORITY BUSINESS ENTERPRISE (MBE) UTILIZATION PLAN - SC Code § 11-35-5240

- 2.4.1 Each Agency procuring construction must have a MBE Utilization Plan. The plan must include the following:
 - A. A policy statement expressing the client's commitment to use minority businesses in all aspects of procurement;
 - B. The name of the client's minority business liaison officer (must be a directorate staff level employee);
 - C. A description of liaison officer's duties including the responsibility to:
 - 1. Develop, manage, and implement the MBE plan on a day-to-day basis;
 - 2. Outline procedures to be used when it is determined feasible to divide larger projects into smaller tasks to allow MBE participation;
 - 3. Develop instructions to prime contractors requiring them to address the use of certified minority business subcontractors;
 - 4. Establish and maintain a directory of certified minority businesses that wish to do business with the State;
 - 5. Disseminate information on available business opportunities to provide minority businesses equal opportunity to compete for professional services and construction contracts;
 - 6. Maintain reference files of federal and state organizations that provide assistance to minority business organizations and make files available to minority businesses;

- 7. Establish and maintain records on the number of bid invitations and RFP's sent to and directed toward certified minority businesses, answers received, and contracts awarded when applicable to the Agency's dollar procurement limit; and
 - 8. Maintain records and submit progress reports to the Small and Minority Business Assistance Office.
- 2.4.2** In the development of MBE utilization plans, agencies must ascertain the total controllable procurement dollars budgeted for that particular fiscal year. Controllable procurement dollars include, but are not limited to, those anticipated expenditures for services, supplies, equipment, or construction that are not:
- A. Currently under contract for the present fiscal year;
 - B. Covered by mandatory term contract;
 - C. Defined as sole source acquisitions;
 - D. Obligated to be awarded to the lowest responsive and responsible source;
 - E. Obligated for repayment of time-pay, lease-purchase equipment, or real property; or
 - F. Required by statute to be expended with a governmental body.
- 2.4.3** Once determined, the Agency must establish realistic goals, including a reasonable percentage, for procurements directed toward certified minority businesses.

2.5 CERTIFICATION OF MINORITY BUSINESSES

- 2.5.1** The Governor's Office of Small and Minority Business Assistance (SMBAO) can certify a business as a minority business. SMBAO will also certify the maximum dollar limit for which the business is eligible to contract. See SC Regulation 19-455.2160(B) through (E) for details on the certification process.
- 2.5.2** A minority business may contact SMBAO at the following address for the application procedure:
- Governor's Office of Small and Minority Business Assistance
1205 Pendleton Street, Suite 440-A
Phone: (803) 734-0657
Columbia, SC 29201
Fax: (803) 734-2498
- 2.5.3** The SMBAO maintains a list of certified minority businesses providing construction and construction related professional services. The list is available to all agencies.

2.6 CONTRACTING WITH CERTIFIED MINORITY BUSINESSES

- 2.6.1 Professional Services:** The Agency must procure all professional services in accordance with Chapter 4. Contracts for construction related professional services with fees \$25,000 or less may be directly negotiated with a certified minority business. An Agency may direct a contract for construction related professional services with fees exceeding \$25,000 towards certified minority businesses. The Agency must include the following statement in the advertisement: "This is a designated contract directed towards certified South Carolina based minority firms to satisfy the minority business enterprise goal of the Agency. However, this does not prevent other firms from submitting resumes for consideration."
- 2.6.2 Construction:**
- A. An Agency may direct an entire construction contract towards certified minority businesses. The Agency must procure the contract in accordance with the requirements of the Procurement Code and this manual. If the procurement requires advertisement, then the Agency must include the following statement in the advertisement: "This is a designated contract directed towards certified South Carolina based minority firms to satisfy the MINORITY BUSINESS goal of the Agency. However, this does not prevent other firms from bidding on this project."
 - B. An Agency may direct all bidders to address the use of certified minority businesses as subcontractors. The Agency should provide specific instructions in the bid documents and the advertisement on how to comply with the requirement. The Agency may declare a bid non-responsive for failure to address the use of minority business subcontractors as instructed.

2.7 BONDING OF SMALL AND MINORITY BUSINESS ENTERPRISES

The State requires bid, payment, and performance bonds on all construction projects in excess of \$50,000. The State does not require bid bonds on projects of \$50,000 or less. Agencies may choose to forgo payment and performance bonds on projects of \$50,000 or less provided they have taken steps to protect the interests of the State by other means.

2.8 SBA SURETY BOND GUARANTEE PROGRAM

The Small Business Administration's Surety Bond Guarantee Program provides guarantees on bonds up to a maximum of \$2 million for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. The SBA program guarantees from 70 percent to 90 percent of losses incurred by surety companies, in the event of a contractor's default, on contracts not exceeding \$2 million. More information on this program is available from SBA Office of Surety Guarantee's Web site (<http://www.sba.gov/aboutsba/sbaprograms/osg/index.html>) or from any SBA office.

2.9 INCOME TAX CREDIT

A contractor who awards a subcontract to a certified South Carolina-based minority business is eligible for a credit of 4% of payments made to the minority subcontractor up to \$50,000 annually or the amount of the tax liability, whichever is less. A contractor is eligible for the income tax credit for 10 taxable years beginning with the taxable year in which the contractor first claims the credit. Contractors should contact the Department of Revenue for the latest information on the extent of this credit. [Http://www.sctax.org/default.htm](http://www.sctax.org/default.htm)

2.10 PROGRESS PAYMENTS FOR CONSTRUCTION RELATED SERVICES

An Agency may provide for progress payments in its construction contracts. If an Agency does so, it must also provide for retaining a certain percentage of the contractor's proceeds until project completion; however, the Agency cannot retain more than 3-1/2%. If the minority business requests a release of the retainage in a progress payment and the Agency determines that the business is achieving satisfactory progress, the Agency may authorize payment of the retainage in addition to the progress payment.

2.11 LETTERS OF CONTRACT AWARD

If, after receiving an award for a state contract, a minority business requests a letter of contract award, the State Engineer or the Agency's procurement officer must furnish a letter stating the dollar value, duration, payment schedule, and other information concerning the contract to the minority business.

2.12 REQUIRMENTS OF STANDARD FORM CONTRACTS

To assist the Agency in meeting its MBE utilization goals, each standard form contract that includes construction services includes an MBE reporting requirement. This reporting requirement requires the contractor to provide the Agency with a report listing every MBE (whether certified by the state or not) with which it contracts to provide labor, material, or equipment to the project and to provide the name of the certifying entity, i.e. state, or federal government.

CHAPTER 3

PRELIMINARY PROJECT PLANNING

CONCEIVING, DEFINING, AND INITIATING THE PROJECT

(Best Practices)

3.1 STRATEGIC PLANNING

Infrastructure construction projects should be the culmination of systematic planning starting with a multi-year (typically five years) capital projects plan. This capital projects plan should fit into the agency's strategic plan and the strategic plan should support the need for each facility improvement on the capital projects plan. Thus, project planning should start with the agency's strategic planning and development of a capital projects plan.

3.2 INITIATING THE PROJECT

- 3.2.1 Once the agency is ready to initiate a project for design and construction it must, if the project is sufficiently large, establish the project as a Permanent Improvement Project (PIP) by obtaining a Phase 1 approval from the JBRC.
- 3.2.2 The procedure for determining if a project needs to be initiated as a PIP and initiating a PIP is set forth in Chapter 2 through 5 of the Manual for Planning and Execution of State Permanent Improvements, Part I.
- 3.2.3 Phase 1 approval will allow the agency to define the project by developing the program, budget, and schedule.

3.3 DEFINING/PROGRAMMING THE PROJECT

- 3.3.1 Once a project is conceived, it must be defined. A project is defined by answering a series of questions:
 - A. Why is the project being undertaken?
 - B. What will the function of the facility be?
 - C. What amenities and other features must be included in the facility?
 - D. What are the aspirations of the agency for the project?
 - E. Where will the facility be located?
 - F. Are local governmental approvals such as zoning permits required?
 - G. Does the project impact or involve existing facilities?
 - H. When does the agency need the facility and what is its likely cost?
 - I. How will the agency finance the project?
- 3.3.2 The answers to these questions are interrelated. For example, a site zoned residential will not, absent a zoning change, be suitable for a laboratory.
- 3.3.3 The process of analyzing the agency's needs and defining the project is commonly called Programming. A well-conceived and defined program is critical to the start and completion of a successful project. Some agencies have the capability to program certain projects using their employees. Others will almost always need to contract with a consultant to provide programming assistance. The answer to the question of whether an outside consultant is necessary will often depend on the size and complexity of the project. While OSE guidance is available, each agency will need to decide for itself whether programming assistance is needed for the particular project at hand.
- 3.3.4 If the agency must acquire land to site the project, it will need to follow the procedures set forth in Chapter 10 (Real Property) of the Manual for Planning and Execution of State Permanent Improvements, Part I.
- 3.3.5 Once the agency has defined the scope, schedule, budget, and means of financing for its project, the agency is ready to select the project delivery method most advantageous to the state for the project. The procedure for selecting the most advantageous project delivery method is set forth in Sub-Chapter 3.1 of this Manual.
- 3.3.6 Once OSE has approved the selected project delivery method, the agency is ready to proceed with the next step in establishing the PIP for design and construction.
 - A. If the selected method is Design-Bid-Build, the agency may continue under Phase 1 approval through the completion of schematic design prior to obtaining JBRC Phase 2 approval, which will allow the agency to proceed with complete design, bidding, and construction.

- B.** While the same is also true if the agency selected Construction Management at Risk, in such case, the agency may want to seek permission to hire the Construction Manager at Risk as a part of Phase 1 approval. This will enable the Construction Manager to provide valuable input during the development of the schematic design.
- C.** If the selected method is Design-Build, Design-Build-Operate-Maintain, or Design-Build-Finance-Operate-Maintain, the agency will, if further work is necessary to develop its design requirements (see Chapter 12 for definition), want to finish developing its design requirements under JBRC Phase 1 approval and then obtain JBRC Phase 2 approval to proceed with soliciting and contracting with a design-builder.

CHAPTER 3

PRELIMINARY PROJECT PLANNING

SUB-CHAPTER 3.1

SELECTING PROJECT DELIVERY METHOD & SOURCE SELECTION METHOD

3.1.1 AUTHORIZED PROJECT DELIVERY METHODS - SC Code Ann § 11-35-3005 & 11-35-3010

The Procurement Code requires an Agency to make a written determination of the project delivery method that will be most advantageous for the State for the specific project at hand. The following are project delivery methods authorized by statute:

- A. Design-Bid-Build
- B. Construction Management at-Risk (CM/at-risk) also known as CM/Constructor (CM/C);
- C. Operations and Maintenance;
- D. Design-Build;
- E. Design-Build-Operate-Maintain;
- F. Design-Build-Finance-Operate-Maintain; and
- G. Any other combination of design, construction, finance, and services for operation and maintenance the SFAA or State Engineer may authorize.

3.1.2 PROJECT DELIVERY OPTIONS TRANSLATOR

It is normal to find different parties with different understandings concerning what each of the terms used above means. For this reason, some jurisdictions have adopted a project delivery method translator, a version of which is published below. This translator does not include finance, operations, and maintenance additions to the design-build project delivery method.

PROJECT DELIVERY OPTIONS TRANSLATOR – DEFINING CHARACTERISTICS OF EACH OPTION

Design & Construction Services Combined in One Contract	No	No	No	Yes	Yes
Cost of Work a Selection Criteria	Yes	Yes	No	Yes	No
Total Construction Cost Sole Selection Criteria	Yes	No	No	No	No
	↓	↓	↓	↓	↓
Common Names Used	Design-Bid-Build - Competitive Sealed Bids	CM at Risk/CM Constructor – Competitive Cost Proposal	CM at Risk/CM Constructor – Competitive Qualifications Proposal (Note: Agency must have strong written justification for approval to make Selection that does not consider fee as a factor.)	Design-Build – Competitive Cost Proposal	Design-Build – Competitive Qualifications Proposal (Note: Code places severe limitations on selection that does not consider price as a factor)
	↓	↓	↓	↓	↓
Insert Your Own Name for Each Method					

For the Procurement Code's definition of each authorized selection method, see SC Code Ann. § 11-35-2910.

3.1.3 AGENCY ASSESSMENT OF PROJECT AND SELECTION OF PROJECT DELIVERY METHOD

SC Code Ann § 11-35-3010 and Regs 19-445.2145(B)

- A.** Early in the planning stages of a project, an Agency must determine which project delivery method to use for the delivery of design and construction services. The Agency should make this determination as soon as sufficient information is available to make an informed decision following the determination procedures below. This may be either before or after initial establishment of the permanent improvement project (PIP) with the Joint Bond Review Committee and State Fiscal Accountability Authority. Often this will be at the completion of programming.
- B.** The Agency must select the method “which is most advantageous to the State and results in the most timely, economical, and successful completion, of the project. *SC Code Ann § 11-35-3010(1)*. In selecting the appropriate project delivery method, the Agency must carefully assess the requirements the project must satisfy and other characteristics that would be in the best interest of the State. The Agency assessment must consider and answer who, what, where, when, why, and how questions regarding factors related to the infrastructure facility and how these factors support one delivery method over another. The following specific factors are set forth in the Procurement Code:
 - 1.** Facility
 - a.** What type of infrastructure facility or service is the Agency acquiring?
 - b.** What are the size, scope, complexity, and technological difficulty of the infrastructure facility?
 - c.** To what extent are design requirements for the infrastructure facility known, stable, and established in writing?
 - 2.** Location of Facility
 - a.** What are the attributes the site must have?
 - b.** What sites are available?
 - c.** Are there unique characteristics of available sites that would impact project?
 - 3.** Time Deadlines
 - a.** What is the earliest date on-site work can start?
 - b.** What is the deadline for completion of the infrastructure facility?
 - c.** Does the Agency have critical intermediate deadlines between start and completion of the project?
 - 4.** Financing to support design, construction, operations, maintenance, repairs, and demolition over the facility life cycle including:
 - a.** What are the projected life cycle costs?
 - b.** What are the potential sources of funding for these costs?
 - c.** What is the projected cash flow requirement?
 - 5.** Available Project Delivery Methods
 - a.** What are the comparative advantages and disadvantages of each method for the infrastructure facility?
 - b.** How the Agency may appropriately configure and apply each method to fulfill the Agency’s requirements for the infrastructure facility?
 - c.** What project delivery methods has the Agency used on similar infrastructure facilities in the past and what were the results?
 - 6.** Decision making and administrative services
 - a.** Which State personnel are available to the Agency to make decisions and administer the project and what are their relevant experiences, skills, and abilities?
 - b.** To what extent can the Agency appropriately assign decision-making and administration to designers, builders, construction managers-at-risk, design-builders, design-build-operations producers, design-build- finance-operations producers, peer reviewers, or operators?
 - c.** To what extent can the Agency appropriately assign decision-making and administration to outside consultants, including construction managers (agent)?

- C. The Procurement Code designates design-bid-build as an appropriate project delivery method for any infrastructure facility project except guaranteed energy, water, or wastewater savings contracts. *See SC Code Ann Reg. 19-445.2145(B)(3)*. Except in the case of guaranteed energy, water, or wastewater savings contracts, an Agency may choose design-bid-build as the source selection method for a project without further project specific justification; however, a written determination must still be prepared on SE Form 200 and placed in the procurement file.
- D. A determination of project delivery method for guaranteed energy, water, or wastewater savings contracts is not necessary as the delivery method is dictated by the nature of guaranteed energy, water, or wastewater savings contracts (i.e. design-build or a permutation of design-build).

3.1.4 SELECTING SOURCE SELECTION METHOD – SC Code Ann § 11-35-3015

The source selection method is the method the Agency will use to procure design and construction services. The Procurement Code prescribes source selection methods for most project delivery methods. These methods are as follows:

- A. Design-Bid-Build
 - 1. Architect-engineer, construction management, and land surveying services procured using qualification based selection procedures of SC Code Ann § 11-35-3220.
 - 2. Construction services procured using competitive sealed bidding as provided in SC Code Ann § 11-35-1520.
- B. Construction Management at Risk
 - 1. Architect-engineer and land surveying services procured using qualification based selection procedures of SC Code Ann § 11-35-3220.
 - 2. Construction Manager at Risk procured using competitive sealed proposals as provided in SC Code Ann § 11-35-1530 or competitive sealed bidding as provided in SC Code Ann § 11-35-1520. While the Procurement Code does allow procurement of the CM at Risk using competitive sealed bidding, OSE finds it difficult to imagine the circumstances under which this would be advantageous to the State since bidding would require a complete or nearly complete design negating many of the benefits of this delivery method.
- C. Operations and Maintenance – Any source selection method allowed by SC Code Ann § 11-35-1510.
 - 1. Section 11-35-1525 (Fixed Priced Bidding);
 - 2. Section 11-35-1528 (Competitive Best Value Bidding);
 - 3. Section 11-35-1530 (Competitive Sealed Proposals);
 - 4. Section 11-35-1550 (Small Purchases);
 - 5. Section 11-35-1560 (Sole Source Procurements);
 - 6. Section 11-35-1570 (Emergency Procurements);
 - 7. Section 11-35-3220 (Architect Engineer, Construction Management and Land Surveying Services
 - 8. Procurement Procedures); and
 - 9. Section 11-35-3230 (Exception for Small Architect-Engineer and Land Surveying Services Contracts).
- D. Design-Build – Competitive sealed proposals as provided in SC Code Ann § 11-35-1530.
- E. Design-Build-Operate-Maintain – Competitive sealed proposals as provided in SC Code Ann § 11-35-1530.
- F. Design-Build-Finance-Operate-Maintain - Competitive sealed proposals as provided in SC Code Ann § 11-35-1530.
- G. Any other combination of design, construction, finance, and services for operation and maintenance the SFAA or State Engineer may authorize pursuant to SC Code Ann § 11-35-3005(2) - Any source selection method allowed by SC Code Ann § 11-35-1510.

3.1.5 WRITTEN DETERMINATION OF APPROPRIATE PROJECT DELIVERY METHOD

SC Code Ann § 11-35-3010 and Regs 19-445.2145(B)(4)

- A.** After assessing the requirements of the project and selecting the most advantageous project delivery method, the Agency must prepare a written report (the determination) signed by the Agency Head which sets forth the facts and considerations leading to the selection of the particular method. This determination must:
- 1.** Describe the selected project delivery method;
 - 2.** Describe the source selection method (See SC Code Ann § 11-35-3015 and 3.1.4 above);
 - 3.** Describe any additional procurement procedures (See SC Code Ann §§ 11-35-3023 & 11-35-3024(2)(c) and Sub-Chapter 3.2 for allowed additional procedures);
 - 4.** Describe the types of performance security selected (See SC Code Ann § 11-35-3030 & 11-35-3037 and Chapter 2); and
 - 5.** Set forth the facts and considerations leading to these selections:
 - a.** See and address factors discussed in 3.1.3 above including why other delivery methods are either not practical or not advantageous to the State;
 - b.** Set forth basis for selecting source selection method (if by statute, cite statute);
 - c.** Set forth basis for selecting additional procurement procedures; and
 - d.** Set forth basis for selecting performance security (if by statute, cite statute).
- B.** The written determination must meet the requirements set forth in Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003). The Agency will find the Sloan decision posted at http://www.mmo.sc.gov/webfiles/MMO_Legal/Decisions/Sloan_v._Greenville_School_Dist_%5B98-CP-23-2816%5D.pdf. Under Sloan, the determination must fulfill two purposes:
- 1.** It must effectively inform the State Engineer and, by extension, the State Fiscal Accountability Authority, why the selected method of contract administration works to the Agency and State's best advantage for the project at issue, and
 - 2.** It must provide the citizens of South Carolina a window into the Agency's "decision-making process – safeguarding the quality and integrity of the contract awards through public accountability." "If the written determination provides sufficient factual grounds and reasoning for the ... public to make an informed, objective review of these decisions, then it has accomplished its purpose." Sloan.
- C.** The Agency must submit the signed written determination to the State Engineer along with a request to use the alternative method. The State Engineer has ten days to review and determine his position with respect to the proposed method. If the State Engineer disagrees with the agency, the State Engineer shall provide written notification to the SFAA and the agency stating the reasons for contesting the selected method. The SFAA shall make the final decision as to the approved method of construction contracting.

3.1.6 WRITTEN DETERMINATION SELECTING DESIGN-BID-BUILD

SC Code Regulation 19-445.2145(B)(3)

The Agency shall use Form SE-200 (when available) as the written determination when selecting Design-Bid-Build and the Agency's recommendation is automatically approved by the State Engineer's Office. The agency shall maintain a copy of the original written determination in its project files.

CHAPTER 3

PRELIMINARY PROJECT PLANNING

SUB-CHAPTER 3.2

SELECTING OTHER ADDITIONAL PROCUREMENT PROCEDURES INCLUDING PRE-QUALIFICATION

3.2.1 SELECTION OF ADDITIONAL PROCUREMENT PROCEDURES

SC Code Ann §§ 11-35-3023 & 11-35-3024(2)(c)

After, or in conjunction with, selecting the project delivery and source selection method, the Agency should determine if it wants to use additional construction procurement procedures permitted by the Procurement Code. These procedures include pre-qualification of contractors and subcontractors, short listing of offerors, stipends.

3.2.2 APPROVAL TO PRE-QUALIFY BIDDERS/OFFERORS AND SUB-BIDDERS/OFFERORS

SC Code Ann § 11-35-3023

- A. Agencies may request approval from OSE to limit participation in a solicitation for construction to those businesses, including potential subcontractors that are prequalified.
- B. The Agency may submit its written request to OSE for approval of pre-qualification as a part of the written determination of project delivery method discussed in Sub-Chapter 3.1.
- C. The request must include a description of the general scope of work to be acquired, the deadline for submission of information, and how businesses may apply for consideration.
- D. If OSE approves pre-qualification of offerors, OSE must supervise the pre-qualification process.
- E. If the selected project delivery method is design-bid-build, the Agency must demonstrate that the construction will exceed \$10 million or that the project is so unique in nature or involves such special circumstances that pre-qualification is necessary or otherwise warranted. For Design-Build, Design-Build-Operate-Maintain, and Design-Build-Finance-Operate-Maintain projects, the Agency must show that cost of preparing proposals is sufficiently high in view of the size, estimated price, and complexity of the procurement as to justify pre-qualifying offerors. *See SC Code Ann § 11-35-3024(c)(i).*
- F. The Procurement Code does not specifically discuss pre-qualifying offerors for construction management-at-risk services; however, applying the standards for justifying pre-qualification of offerors for design-build or design-bid-build services provides a reasonable framework for justifying pre-qualification of construction management at risk offerors.
- G. Pre-qualification for design-bid-build and design-build have significant differences regarding the limits an Agency may place on the number of businesses it pre-qualifies. In the context of design-bid-build, the Agency may not use pre-qualification to exclude otherwise qualified (responsible) firms from competition by limiting competition to a predetermined number of the highest ranked offerors. *See SC Code Ann Reg.19-445.2132(A).* The Agency must solicit proposals from all businesses that meet the published minimum requirements.
- H. In the context of design-build, pre-qualifying offerors is essentially a method of short listing. Using only the criteria set forth in the request for qualifications, the Agency ranks each business from most qualified to least qualified. The basis of the ranking is determined in writing. The Agency then selects a predetermined number of the highest ranked businesses from which it will solicit proposals. OSE recommends the Agency select a minimum of three businesses. If fewer than two businesses are pre-qualified, the Agency must cancel the pre-qualification process. The determination regarding how many offers to solicit is not protestable.
- I. In determining whether or not to pre-qualify bidders and/or sub-bidders, the Agency must keep in mind that certain decisions made in the prequalification process are protestable. For instance, on a design-bid-build project, the determination that a particular contractor is not qualified is protestable on the grounds that the Agency's decision is "clearly erroneous, arbitrary, capricious, or contrary to law." *See SC Code Ann § 11-35-2410.* On a design-build project, the determination that one offer is more highly qualified than another is protestable on the same grounds. Indeed, the decision to pre-qualify is protestable on the same grounds. *For the right to protest a decision of the Chief Procurement Officer, see SC Code Ann §11-35-4410(1)(b).*
- J. The actual process of pre-qualifying offerors is addressed in Chapter 11.1 or 12.1 (depending on the selected project delivery method) of this Manual and the Pre-Qualification Handbook.

3.2.3 ADDITIONAL PROCEDURES APPLICABLE TO DESIGN-BUILD, DESIGN-BUILD-OPERATE-MAINTAIN OR DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN - SC Code Ann § 11-35-3024(2)(c)

- A. If the Agency determines the cost of preparing proposals is high in view of the size, estimated price, and complexity of the project, the Agency may
 - 1. pre-qualify offerors as discussed above,
 - 2. short list responsible offerors in accordance with provisions set forth in this Manual, or,
 - 3. pay stipends to unsuccessful offerors.
- B. The decision to use these alternative procedures should be made at the time the Agency prepares its written determination of appropriate project delivery method.
- C. If the Agency determines it is appropriate to use one of the additional procedures, it should state so in the written determination of appropriate project delivery method and set forth the factors supporting its use.
- D. Short listing differs from pre-qualification in that it occurs after receipt of proposals rather than before. Under this process, the Agency would receive proposals from any interested business and short list a predetermined number of responsible offerors reasonably susceptible of being selected prior to any discussions under SC Code Ann § 11-35-1530(6) and ranking under SC Code Ann § 11-35-1530(7).
- E. Stipends are intended to stimulate interest in a project among potential offerors by notifying them that the Agency will partially compensate unsuccessful offeror's for the significant cost of preparing a proposal.

CHAPTER 3

PRELIMINARY PROJECT PLANNING

SUB-CHAPTER 3.3

SELECTING PERFORMANCE SECURITY

3.3.1 GENERAL - SC Code Ann Reg. 19-445.2145(4)

- A. At the same time an Agency determines which project delivery method to use on a project, it must also determine the performance security requirements for the project and set these requirements forth in its written determination of appropriate project delivery method.
- B. Performance security is typically provided in the form of a bond but may occasionally take the form of a cashier's check.
- C. Performance security guarantees that the contractor will perform the work of the contract and guarantees that the contractor will pay his subcontractors, suppliers, laborers, etc.
- D. In the case of bonds this security consist of a performance bond guaranteeing the performance obligations toward the owner and a payment bond guaranteeing the contractor's payment obligations toward subcontractors, suppliers, laborers, etc.

3.3.2 SELECTING PERFORMANCE AND PAYMENT SECURITY

SC Code Ann §§ 11-35-3030(2); 11-35-3037; and 29-6-250 and SC Code Ann Reg. 19-445.2145(C)(2)

- A. Both performance and payment security is required in the amount of 100% of the contract price less the cost of operation, maintenance, and finance.
- B. Security may be in the form of a certified cashier's check or surety bonds.
- C. The Agency may also require the contractor to provide operations and maintenance period security in the form of surety bonds and letters of credit covering cost of preventing infrastructure service interruptions for a period up to 12 months and the Agency may require written guarantees from a parent corporation securing re-procurement cost in the event of operations period default.

DELIVERY METHOD	CONTRACTOR	SECURITY REQUIRED	OPTIONAL SECURITY (Only required when Agency Chooses this Option)
Design-Bid-Build	Architect Engineer	None	None
	General Contractor with contract \leq \$50,000	None	Performance Security \leq 100% contract price & Payment Security \leq 100% contract price.
	General Contractor with contract $>$ \$50,000	Performance Security = 100% contract price & Payment Security = 100% contract price.	N/A
Construction Management-at-Risk	Architect Engineer	None	None
	Construction Manager-at-Risk	Performance Security = 100% of construction phase Guaranteed Maximum Price (GMP). Payment Security=100% construction phase GMP	May require security for pre-construction phase work.
Design-Build	Design-Builder	Performance Security = 100% of contract price & Payment Security = 100% of contract price (Contract Price includes design costs)	N/A
Design-Build-Operate-Maintain	Design-Build-Operator	Performance Security Performance Security = 100% of contract price less cost of operations and maintenance & Payment Security = 100% of contract price less cost of operations and maintenance.	Operations Phase performance bond; letter of credit to cover cost of preventing infrastructure service interruptions for a period up to 12 months; and/or parent corporation written guarantee securing re-procurement cost in contractor defaults during operations period.

DELIVERY METHOD	CONTRACTOR	SECURITY REQUIRED	OPTIONAL SECURITY (Only required when Agency Chooses this Option)
Design-Build-Finance-Operate Maintain	Design-Build-Operator	Performance Security = 100% of contract price less cost of financing, operations, and maintenance & Payment Security = 100% of contract price less cost of financing, operations, and maintenance.	Operations Phase performance bond; letter of credit to cover cost of preventing infrastructure service interruptions for a period up to 12 months; and/or parent corporation written guarantee securing re-procurement cost in contractor defaults during operations period.
Design-Build-Finance-Operate Maintain	Design-Build-Operator	Performance Security = 100% of contract price less cost of financing, operations, and maintenance. Payment Security = 100% of contract price less cost of financing, operations, and maintenance	Operations Phase performance bond; letter of credit to cover cost of preventing infrastructure service interruptions for a period up to 12 months; and/or parent corporation written guarantee securing re-procurement cost in contractor defaults during operations period.

3.3.3 FORM OF REQUIRED PERFORMANCE AND PAYMENT SECURITY

SC Code Ann Reg. 19-445.2145(C)(2)

- A. Performance Security:** When the Procurement Code requires performance security, the contractor must provide a certified cashier's check or surety bond in an amount equal to 100% of the contract price less finance, operations, and maintenance costs, if any. A performance bond must be issued by surety company 1) licensed in South Carolina; 2) having a minimum Best Rating of performance. "A" as stated in the most current publication of "Best Key Rating Guide, Property Liability" (<http://www3.ambest.com/ratings/default.asp>),¹ and 3) having a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. If the contractor provides a performance bond, the Surety must write the bond on OSE form SE-355 Performance Bond.
- B. Payment Security:** When the Procurement Code requires payment security, the contractor must provide a certified cashier's check or surety bond in an amount equal to 100% of the contract price less finance, operations, and maintenance costs, if any. A payment bond must be issued by surety company 1) licensed in South Carolina; 2) having a minimum Best Rating of performance "A" as stated in the most current publication of "Best Key Rating Guide, Property Liability" (<http://www3.ambest.com/ratings/default.asp>); and 3) having a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. If the contractor provides a payment bond, the Surety must write the bond on OSE form SE-357 Labor and Material Payment Bond.

3.3.4 FORM OF OPTIONAL PERFORMANCE AND PAYMENT SECURITY

SC Code Ann Reg. 19-445.2145(C)(2) and 19-445.2145(M)

- A. Contracts of \$50,000 or Less - SC Code Ann Reg. 19-445.2145(C)(2):** When security is required on construction of \$50,000 or less, security shall be in the form set forth in 3.3.3 above. However, the agency may, upon written justification and with the approval of the Office of the State Engineer, allow the use of a "B+" rated bond.
- B. Operations Phase Security - SC Code Ann Reg. 19-445.2145(M):**
- 1. PERFORMANCE BOND:** The Agency may choose to require an operations period performance bond securing the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract. An operations period performance bond must be in the amount of 100% of that portion of the contract price that includes the cost of operation and maintenance services during the period covered by the bond. When contract period for operation and maintenance will be longer than 5 years, an operations period performance bond of five years' duration, is acceptable provided that such bond is renewable by the contractor every five (5) years during the contract, and provided further, that the Agency must require the contractor to make a firm contractual commitment to maintain such bond in full force and effect throughout the contract term. A operations period performance bond must be issued by surety company 1) licensed in South Carolina; 2) having a minimum Best Rating of performance "A" as stated in the most current publication of "Best Key Rating Guide, Property Liability" (<http://www3.ambest.com/ratings/default.asp>); and 3) having a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance.

¹For Best Ratings, go to <http://www3.ambest.com/ratings/default.asp>. On this page, the Agency will find place to enter a company's name to find its Best's ratings (at the time of this writing on the right hand side of the page under Member Center). The Agency must register with the site to conduct a search. There is no cost to register.

2. **LETTERS OF CREDIT TO COVER INTERRUPTIONS IN OPERATION:** An Agency may choose to require an irrevocable letter of credit with a banking institution in this State that secures the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract, in an amount sufficient to cover 100% of the cost of performing such operation and maintenance services during the first 12 months of the contract with annual adjustments every year thereafter for the term of the contract.
3. **GUARANTEES:** An Agency may choose to require a written guarantee that secures the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract, in an amount that is sufficient to cover 100% of the cost of performing such operation and maintenance services during the contract period.

CHAPTER 4

PROCURING PROFESSIONAL SERVICES INDEPENDENT OF CONSTRUCTION SERVICES

4.1 RELATED STATUTORY AUTHORITY

- 4.1.1** SC Code §§ 8-13-700 through 8-13-795 of the Ethics, Government Accountability and Campaign Reform Act of 1991 establishes the Rules of Ethical Conduct for public employees.
- 4.1.2** SC Code § 11-35-2910 defines architect-engineer and land surveying services
- 4.1.3** SC Code § 11-35-3210(1) requires that architect-engineer, construction management, and land surveying services be procured as provided in § 11-35-3220 except as authorized by §§ 11-35-1560 (Sole Source), 11-35-1570 (Emergency) and 11-35-3230 (Small Professional Services Contract).
- 4.1.4** SC Code § 11-35-3215 provides for a preference for resident design professionals when qualifications appear to be equal. A business responding to an invitation for design services must submit a certification with its response stating whether it is a South Carolina resident. Submission of a false certification is grounds for suspension or debarment.
- 4.1.5** SC Code § 11-35-3220(5) requires the agency Selection Committee to evaluate each of the persons or firms interviewed in view of their (1) past performance; (2) the ability of professional personnel; (3) demonstrated ability to meet time and budget requirements; (4) location and knowledge of the locality of the project; (5) recent, current, and projected work loads of the firms; (6) creativity and insight related to the project; (7) related experience on similar projects; (8) volume of work for the agency over the past five years; and (9) any other special qualification required by the solicitation.
- 4.1.6** SC Code § 11-35-3245 prohibits architects or engineers who perform design work on a project under a contract awarded pursuant to § 11-35-3220 or § 11-35-3230 from also performing construction work on that project.
- 4.1.7** SC Code § 11-35-3310 allows indefinite delivery contracts to be awarded on an as-needed basis for construction related professional services pursuant to procurement procedures set forth in §§ 11-35-3220 and 11-35-3230.

4.2 DEFINITIONS

4.2.1 Architect-Engineering and Land Surveying Services – SC Code Ann § 11-35-2910(1)

Those professional services associated with the practice of architecture, engineering, land surveying, landscape architecture, and interior design pertaining to construction. Such services include incidental services that members of these professions and their employees may logically or justifiably perform, including studies, investigations, evaluations, consultations, etc. Incidental services that are not procured as a part of a contract for construction related architect-engineer or land surveying services are not architect-engineer and land surveying services and must be procured under the State Purchasing Office's procedures for procuring services rather than the qualification based procurement methods outlined in this Chapter.

4.2.2 Construction Manager Agent Services – SC Code Ann §§ 11-35-2910(2) & (4)

Those professional services associated with contract administration, project management and other specified services provided in connection with the administration of a project delivery method. Construction Management Services does not include construction.

4.2.3 Professional Services – As used in the remainder of this Chapter and wherever referred to in the Manual, the term Professional Services means architect-engineer, construction manager agent, and land surveying services as defined in 4.2.1 & 4.2.2 above.

4.3 SMALL PROFESSIONAL SERVICES CONTRACTS (FEES OF \$25,000 OR LESS)

SC Code Ann § 11-35-3230

- 4.3.1** Small professional services contracts are contracts for professional services where the compensation for services is \$25,000 or less.
- 4.3.2** This sum includes compensation for both basic services and additional services as defined in the Professional agreement.
- 4.3.3** This sum does not include payments for reimbursable expenses.

- 4.3.4** In awarding a small professional services contract, the Agency may request a firm to submit a proposal. The Agency must select a Professional taking into account the following criteria:
- A.** The nature of the project;
 - B.** The proximity of the consultant to the project;
 - C.** The capability of the consultant to produce the required services within a reasonable time;
 - D.** Past performance; and
 - E.** The Professional's demonstrated ability to meet project budget requirements.
- 4.3.5** Subject to the foregoing considerations, the Agency may enter into contract negotiations with the selected firm.
- 4.3.6** However, if the Agency has now or has previously had other contracts with the most qualified Professional, the Agency may not be able to contract with that Professional. State Law prohibits entering into a small Professional contract if the sum of all fees, excluding reimbursable expenses, paid to the Professional in the previous 24 months under small contracts exceeds \$75,000. The selected Professional must provide the Agency with a list of services provided to the Agency and fees received from the Agency under small contracts for the previous 24 month.
- 4.3.7** The Agency may use a letter agreement with the SE-240, South Carolina Small Professional Services Contract Terms and Conditions, as the contract. After executing the Professional agreement, the Agency must submit a copy to OSE for information purposes using the SE-230, Transmittal of Small Professional Service Contract.

4.4 LARGE PROFESSIONAL SERVICES CONTRACTS – SC Code Ann § 11-35-3220

4.4.1 Selection Committee

- A.** The first step in procuring professional services that cannot be established as a Small Architect-Engineer and Land Surveying services contract as set forth in Part 4.3 above is to establish a selection committee (committee).
- B.** The Agency head or designee sits as a permanent member of the committee for the purpose of coordinating and accounting for the committee's work.
- C.** The Agency may invite the OSE project manager to sit on the committee as a non-voting member to assist the committee as needed.
- D.** Committee members are subject to the Ethics, Government Accountability and Campaign Reform Act of 1991. (See SC Code Ann. §§ 8-13-700 through 8-13-795) Committee members should become familiar with the requirements of this act and avoid any conflict of interest. The Agency must have committee members sign an SE-214, Confidentiality & Conflict of Interest Policy as a means of advising them of their responsibilities. Moreover, the Agency should have any other person involved in the decision making process sign an SE-214, Confidentiality & Conflict of Interest Policy. For example, if the Agency Head is not a member of the Committee but has final say over the Committee's decision, the Agency Head should sign a Confidentiality & Conflict of Interest Policy. The same is true for members of a Board of Trustees.
- E.** The committee must comply with the Freedom of Information Act; however, committee members must not disclose confidential information derived from proposals and negotiations submitted by competing offerors during the selection process. There is a summary of the requirements of this act in Chapter 1.

4.4.2 Committee Duties – SC Code Ann § 11-35-3220(2)(a)

In summary, the committee's duties are to:

- A.** Develop the description of the proposed project;
- B.** Determine the professional services required for the project;
- C.** Prepare the formal invitation for professional services;
- D.** Determine the ranking range for each of the evaluation criteria;
- E.** Evaluate all timely responses and determine the list of persons or firms to be interviewed; and
- F.** Attend all interviews, evaluate the qualifications of each firm, and determine the ranking of the firms interviewed.

4.4.3 Invitation for Professional Services – SC Code Ann § 11-35-3220(2)(B)

- A. The committee must prepare the invitation for professional services on an SE 210, Invitation for Professional Services.
- B. At a minimum, the invitation must include the project title, the general scope of work, a description of all professional services required for the project, the anticipated project delivery method, the submission deadline, and how interested firms may apply for consideration.
- C. The invitation should also notify all interested firms that their response must include a certification stating whether the business is a resident of South Carolina.
- D. Once the Agency is ready to advertise, it must submit the completed SE-210 to OSE in Word format for review and approval.
- E. Upon approval, OSE will submit the invitation to South Carolina Business Opportunities (SCBO) for advertisement. The Agency may advertise elsewhere but must advertise in SCBO.

4.4.4 Short-Listing Professionals for Interviews – SC Code Ann § 11-35-3220(3), (4) & (5)

- A. Upon receiving responses to the invitation for professional services, the committee should review them for completeness. Each response (hereinafter “resumes”) should include the following information:
 - 1. Federal Standard Form 330;
 - 2. Certification stating whether the business is or is not a South Carolina resident;
 - 3. Information responsive to the selection criteria; and
 - 4. Any other information that the invitation required.
- B. In the event of an incomplete resume, the Agency may contact the Professional who submitted the resume to obtain the required information provided the resume due date has not passed. Professionals must submit any such supplemental information to their resumes before the resume due date. The Agency may disqualify any Professional that fails to supply required information in their resume before the resume due date from further consideration for non-responsiveness.
- C. The committee must evaluate all resumes prior to conducting any interviews using the following criteria:
 - 1. Past performance;
 - 2. Ability of professional personnel;
 - 3. Demonstrated ability to meet time and budget requirements;
 - 4. Proximity to and knowledge of the locality of the project (application of this criterion must leave an appropriate number of qualified firms, given the nature and size of the project);
 - 5. Recent, current, and projected work load;
 - 6. Creativity and insight related to the project;
 - 7. Related experience on similar projects;
 - 8. Volume of work awarded by the Agency to the Professional during the previous five years with the objective of equitably distributing contracts among qualified Professionals including certified Minority Business Enterprises and firms that have not had previous state work; and
 - 9. Other special qualifications required by the solicitation.
- D. When the selection committee finds two professionals to be equally qualified, and one is non-resident, the committee must rank the resident professional higher than the non-resident. See SC Code Ann § 11-35-3215.
- E. After evaluating the resumes, the committee may create a short-list of Professionals considered most qualified for the committee to interview.
- F. The committee must select a minimum of three Professionals for interviews. If fewer than three Professionals responded to the invitation, the committee should interview each Professional that fully responded to the invitation.
- G. The committee must prepare a written report supporting its determination as to which professionals it chose to interview. In this report, the committee must list the names of all professionals that responded to the Invitation for Professional Services and must enumerate its reasons for selecting the professionals to be interviewed.
- H. Using the SE 212, Notification of Selection for Interview, the committee must notify all Professionals that responded to the invitation, which Professionals the committee selected for interviews. The Agency may send this and all other written notices to parties providing email addresses if in the solicitation, the Agency has notified all interested parties that notice will be via email.

4.4.5 Interviewing and Evaluating Short Listed Professionals

SC Code Ann §§ 11-35-3220(4) & (5) and 11-35-3215

- A. No later than ten days before the interview date, the committee should send written notice of the date and location for interviews to the short-listed Professionals.
- B. All interviews should occur on the same day.
- C. If the committee will be interviewing the Professionals in various locations, the chair should make sure that each location is similarly equipped and furnished.
- D. The committee should include with the notice of interview date and location the relative ranking of the criteria that the committee will use to score interviews.
- E. Each voting member of the committee needs to be present for each interview.
- F. During the interviews, the committee may only evaluate the Professionals on the following criteria:
 - 1. Past performance;
 - 2. Ability of professional personnel;
 - 3. Demonstrated ability to meet time and budget requirements;
 - 4. Proximity to and knowledge of the locality of the project (application of this criterion must leave an appropriate number of qualified firms, given the nature and size of the project);
 - 5. Recent, current and projected work loads of the firms;
 - 6. Creativity and insight related to the project;
 - 7. Related experience on similar projects;
 - 8. Volume of work awarded by the using Agency to the Professional during the previous five years - objective is to equitably distribute contracts among qualified Professionals including certified Minority Business Enterprises and firms that have not had previous state work; and
 - 9. Other special qualifications required by the solicitation.
- G. The committee must not discuss fees and compensation with the Professionals during the interviews.
- H. After the close of all interviews, each committee member must complete an evaluation of all interviewed firms using the SE 215, Professional Services Selection Committee Member – A/E Evaluation. If a committee member determines two firms to be equally qualified, the committee member must re-evaluate their rankings to break any ties in scores prior to submitting the SE-215 to the committee chair.
- I. After each committee member has completed and submitted his or her rankings to the chair, the committee must compile these rankings into a committee ranking using the SE 217, Professional Services Selection Committee Summary.
- J. If the committee determines two firms to be equally qualified, the committee must re-evaluate their rankings to break any ties in final rankings.
- K. If the committee determines two firms to be equally qualified and one firm is a resident firm and the other is a non-resident firm, the committee must rank the resident firm higher than the non-resident firm.

4.4.6 Final Determination and Notification of Selection

SC Code Ann § 11-35-3215, § 11-35-3220(6) & § 11-35-4210(1)(b)

- A. The committee's decision on the ranking of each Professional is final, subject only to the Agency's internal approval process.
- B. Once the Agency determines its ranking report is final, the Agency must prepare an SE-219, Notification of Selection for Contract Negotiation, setting forth the highest ranked person or firm.
- C. The Agency must immediately send a copy of the SE-219 to all Professionals that responded to the Invitation for Professional Services and post the SE-219 at the location set forth in the Invitation.
- D. The Agency must support the selection of non-resident with a written determination explaining why they selected that firm.
- E. SC Code § 11-35-4210 provides any Professional that responded to the invitation the right to protest an award. A Professional must protest within ten days after the posting of the SE-219, Notice of Selection for Contract Negotiation. If an offeror files a protest, the Agency may not enter into a contract for the professional services until the protest is resolved or until after the State Engineer grants relief from the automatic stay on any further action. See Chapter 1 for details on the protest process including lifting the stay on further action.

4.4.7 Negotiation Professional Services Contracts– SC Code Ann § 11-35-3220(7)

- A. The Agency must attempt to negotiate with the Professional with the highest ranking in the ranking report.
- B. Only if the Agency is unable to negotiate an acceptable contract with that Professional may the Agency terminate those negotiations and approach the second highest ranked Professional. For more on terminating negotiations and negotiating with another Professional, see 4.4.8 below.
- C. Successful contract negotiations require an exchange of information. The Agency should provide the Professional with the Agency's budgetary goals for the project, master plans, program data, Agency standards, and with all available technical information about the project work area. This will enable the Professional to estimate the design effort required for the project. Examples of technical information the Agency should provide if available include:
 - 1. Program (unless it is to be developed by the Professional);
 - 2. Site boundary and/or topography surveys;
 - 3. Testing and surveys for hazardous material;
 - 4. Sub-surface investigations;
 - 5. Material testing, etc.
- D. The Agency should obtain a description of the services the Professional proposes to provide and determine if the proposed scope of services is adequate or excessive. This will enable the Agency to put a value on the Professional's services.
- E. The Agency should also become familiar with the standard professional services contract. After reviewing the standard contract, the Agency should ask and answer any number of questions. Examples are:
 - 1. Are the insurance limits adequate to cover the potential risk on this project and if not, are we willing to bear the risk?
 - 2. If we want increased insurance limits are we willing to pay the additional cost? (Check with the Professional to see what his/her insurance limits are - they may already be greater than the limits stated in the contract)
 - 3. What deliverables do we want?
 - 4. Do we have critical delivery dates for some or all of the deliverables and if so, what are they?
 - 5. Do we want digital drawings and if so what format and media?
- F. After exchanging information and agreeing on changes to the standard contract, the Agency is in a position to consider what would be a fair and reasonable fee for the Professional's services.
- G. In addition to negotiating the Basic Services Fee, the Agency should negotiate allowances for any required Additional Services (those not covered by the scope of the Basic Services fee) and for reimbursable expenses. OSE staff are available to provide guidance based on their professional experience.

4.4.8 Unsuccessful Negotiations – SC Code Ann § 11-35-3220(7)

- A. If the Agency is unable to negotiate an acceptable contract with the highest ranked Professional, the Agency may terminate negotiations.
- B. The Agency must provide the highest ranked Professional with written notice of the termination of negotiations.
- C. Upon providing written notice of termination to the highest ranked Professional, the Agency must prepare and post a new SE-219, Notification of Selection for Contract Negotiation setting forth the intent to negotiate a contract with the Professional receiving the next highest ranking. This new Notice must be provided to all Professionals responding to the invitation.
- D. The Agency may then contact the Professional receiving the next highest ranking to initiate negotiations.
- E. If the Agency is unable to negotiate an acceptable contract with this Professional as well, the Agency may continue the process in the same manner until the Agency is able to negotiate an acceptable contract. At no time, however, should negotiations include more than one Professional.

4.4.9 Successful Negotiations Submittal to State Engineer - SC Code Ann § 11-35-3220(8) & (9)

- A. Following successful negotiations, the Agency must submit an SE-220, Request for Authority to Execute a Professional Service Contract, to OSE for approval.

- B. If the project is a PIP, the Agency needs to have an approved Form A-1 before submitting the Request to OSE. The Agency must include with the submission the attachments listed at the bottom of the form.
- C. The Agency may not execute the contract or authorize the Professional to begin work until OSE has approved the Request.
- D. OSE has ten days to review and approve the Request for Authority to Execute a Professional Service Contract. Upon approval, OSE will return an approved copy of the Request to the Agency. The Agency may then execute a contract with the selected Professional.
- E. If OSE does not approve the Request, the State Engineer will give written notification to the Agency declaring his intention to contest the proposed contract and the reasons why. The State Fiscal Accountability Authority will hear any such contest at its next regularly scheduled meeting after notification of the Agency. The SFAA will notify the Agency in writing of its decision.

4.5 PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACTS (IDCs)

SC Code Ann § 11-35-3310(1)(b)

- 4.5.1** A Professional Services Indefinite Delivery Contract (IDC) is a contract whereby the professional agrees to provide the Agency professional services on an “as-needed” basis during the term of the contract.
- 4.5.2** Agencies procure Professional IDC’s in the same manner as any professional service contract as set forth in this chapter. They do not, however, have to obtain OSE approval of the individual Delivery Orders to the contract.
- 4.5.3** Chapter 9 of this Manual provides guidance on procuring IDC’s.

4.6 PROCEDURES FOR AMENDING PROFESSIONAL SERVICES CONTRACTS

SC Code Ann § 11-35-3220(8) & (9)

- 4.6.1** The Agency should negotiate fees for changes in the scope of work using good procurement practices and in keeping with the terms of the contract.
- 4.6.2** If an amendment to a Professional Services contract exceeds the Agency’s Architect/Engineer Contract Amendment certification, the Agency must submit a completed SE 260, Request for Authority to Amend a Professional Services Contract, to the OSE for approval, prior to authorizing the work.
- 4.6.3** If an amendment to a Professional Services contract is within the Agency’s Architect/Engineer Contract Amendment certification, the Agency shall submit a completed SE-260 to the OSE for information.

4.7 SOLE SOURCE AND EMERGENCY SELECTION OF PROFESSIONAL SERVICES

The Agency must make all Sole Source and Emergency procurements in accordance with Chapter 8 of this manual. Prior OSE approval of such procurements is not required.

4.8 PROFESSIONAL LIABILITY INSURANCE

- 4.8.1** All design professionals working for the State should carry professional liability insurance.
- 4.8.2** Article 2 of the South Carolina modified AIA Document B101, 2007, the SE-235, Professional Services Incidental Services Contract, and the SE-240, SC Small Professional Services Contract Terms and Conditions, set forth a recommended minimum amount of insurance. These amounts take into account the State’s limited liability under Sovereign Immunity.
- 4.8.3** The Agency project manager, in conjunction with its risk management office, should evaluate the risks associated with each project and the potential consequences, and adjust the amounts accordingly.

4.9 DESIGN PROFESSIONAL ERRORS AND OMISSIONS

- 4.9.1** The Agency should notify the Design Professional whenever the Agency believes the Design Professional’s work product contains errors or omissions. The A/E must correct any error or omission without cost to the agency.
- 4.9.2** When the Design Professional’s error or omission results in costs to the Agency over those the Agency would have paid had the error or omission not occurred, the Design Professional is responsible for such additional cost. For purposes of determining costs, each error or omission constitutes a separate event.
- 4.9.3** If some or all of the increased costs due to an error are owed to a third party, such as a contractor, the Design Professional may elect to negotiate directly with the contractor and pay the contractor directly.
- 4.9.4** All work added due to an omission must be negotiated through the agency to be sure the additional work is included in the construction contract by change order.

TABLE 5-1 FLOOD HAZARD INFORMATION & FLOOD LOADS**FLOOD HAZARD AREA**

Flood Map Information: Flood Zone: _____ Community Number: _____
 Is the Project Site in a 100-Year Flood Plain? Yes ☐ No ☐ Panel Number: _____
 Base Flood Elevation _____ MSL NGVD or FIRM
 Design Flood Elevation _____ MSL IBC 1612.3 and ASCE 24

NON HIGH-VELOCITY WAVE ACTION

Elevation of Lowest Proposed Floor _____ MSL Meet ASCE 24 Section 2.6.2.1/ 2.6.2.2
 Dry floodproofing Yes ☐ No ☐ per ASCE 24

HIGH-VELOCITY WAVE ACTION

Elevation of bottom of Lowest Horizontal Structural Member of lowest floor _____ MSL
 Flotation resistant Yes ☐ No ☐ per ASCE 24
 Breakaway wall Yes ☐ No ☐ per ASCE 24

IBC 1612 and SE-510, as applicable

ZONING CERTIFICATION

"I hereby certify that, to the best of my knowledge, these plans comply with applicable zoning ordinances, and that plans have been submitted to appropriate authority for their review and/or approval."

Signed: _____
 Architect/Engineer Date

If the project does not require a National Pollution Discharge Elimination System (NPDES) permit from SCDHEC, include the following certification on the Site Plan(s):

EROSION AND SEDIMENT REDUCTION/STORMWATER MANAGEMENT

Designer's Certification:

"I hereby certify that the measures in this plan are designed to control erosion, retain sediment on the site, and manage stormwater in a manner that neither any on-site nor off-site damage or problem is caused or increased, that all structural measures are designed to the minimum standards for health and safety, and that all the provisions of the plan are in compliance with the Regulations contained in Chapter 72, Article 2, SC Code of Regulations (Erosion and Sediment Reduction and Stormwater Management Regulations)."

Signed: _____
 Engineer or Registered Landscape Architect (Circle one) Date

TABLE 5-2 SOILS & SITE		
SOILS INVESTIGATION (If required)	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC 1803.2
<u>SOILS CLASSIFICATION</u>		
Site Class	_____	per IBC 1613.3.2
Classes Soil of Materials (UCS System)	_____	per IBC 1803.5.1
Allowable Footing Bearing Pressure	_____ psf	
MINIMUM DESIGN SOIL BEARING LOAD	_____ psf	per IBC table 1806.2
<u>COMPACTION</u>		
Subgrade: _____ Percent	<input type="checkbox"/> ASTM D698 <input type="checkbox"/> ASTM D1557 <input type="checkbox"/> AASHTO (only for paving & roads)	
Base: _____ Percent	<input type="checkbox"/> ASTM D698 <input type="checkbox"/> ASTM D1557 <input type="checkbox"/> AASHTO (only for paving & roads)	
Other: _____ Percent	<input type="checkbox"/> ASTM D698 <input type="checkbox"/> ASTM D1557 <input type="checkbox"/> AASHTO (only for paving & roads)	
MINIMUM DESIGN SOIL LATERAL LOAD	_____ psf	per IBC 1610.1
<u>FOOTINGS</u>		
Undisturbed footings	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Compacted Fill Material	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC 1804.6
<u>ELEVATIONS</u>		
Elevation of Water Table:	_____	MSL
Elevation of lowest footing:	_____	MSL
Elevation of lowest floor or basement:	_____	MSL

NOTE: Where a fire wall is necessary to separate buildings, each building is to be provided individual code criteria tables 5-3 through 5-14. See IBC 503.1.2.

TABLE 5-3 BASIC BUILDING CODE INFORMATION			
CONSTRUCTION CLASSIFICATION	Type:_____ (IBC 602)		
OCCUPANCY CLASSIFICATION (indicate all) (Note IBC 504.2)	_____ (IBC 302)		
MOST RESTRICTIVE OCCUPANCY CLASSIFICATION	_____ (IBC Tables 504.3, 504.4 & 506.2)		
Does building require Incidental Use Area Separation?	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IBC 509.1)	
Does building have Accessory Occupancy (ies)? If so, what percent of story is Accessory Occupancy?	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IBC 508.2)	_____ SF _____ %
Mixed Occupancy	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IBC 508)	
Non separated	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IBC 508.3)	
Separated	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IBC 506.2.2) (IBC 506.2.4) (IBC 508.4)	
Fire Apparatus Access and Water Line	Yes <input type="checkbox"/> No <input type="checkbox"/>	(IFC 503 & 507)	
OTHER FIRE PROTECTION SYSTEMS, DEVICES or FEATURES If the building has any special or notable fire protection or safety feature or hazard the designers should list them here, describe the performance characteristics and refer to locations in construction documents. (e.g. fire extinguishers, smoke-evacuation/control/compartments. Note IBC 414.1.3.)			

TABLE 5-4 BUILDING AREA	
AREA LIMIT BY TABLE 506.2 OF IBC	_____ SF (area limitation per story)
AREA INCREASES BY SECTION 506.2 AND 506.3 OF IBC EXPLANATION OF INCREASES: _____	_____ SF (maximum modified area per story)
AREA AS ALLOWED IN IBC PER STORY Story/Level: _____ Story/Level: _____ Story/Level: _____ Story/Level: _____	_____ SF (area per story) _____ SF (area per story) _____ SF (area per story) _____ SF (area per story)
TOTAL ALLOWED AREA OF BUILDING (summary of all stories)	_____ SF
AREA AS DESIGNED PER STORY Story/Level: _____ Story/Level: _____ Story/Level: _____ Story/Level: _____	_____ SF (area per story) _____ SF (area per story) _____ SF (area per story) _____ SF (area per story)
TOTAL DESIGNED AREA OF BUILDING	_____ SF

TABLE 5-5 BUILDING HEIGHT				
	AS DESIGNED		AS ALLOWED BY IBC	
	In Feet	In Stories	In Feet	In Stories
PER TABLE 504.3	_____	N/A	_____	N/A
PER TABLE 504.4	N/A	_____	N/A	_____
Total Height, including any Allowable Increase	_____	_____	_____	_____

TABLE 5-6 BUILDING DESIGN OCCUPANT LOAD					
		A	B	C	D
STORY/ LEVEL	FUNCTION OF SPACE ⁽¹⁾	FLOOR AREA ⁽²⁾ (NSF or GSF)	MAX AREA ALLOWED PER OCCUPANT ⁽³⁾ (NSF or GSF)	OCCUPANTS ON FLOOR FOR THIS FUNCTION ⁽⁴⁾	DESIGN OCCUPANT LOAD ⁽⁵⁾
_____	_____	_____	_____	_____	
	_____	_____	_____	_____	
	_____	_____	_____	_____	
	_____	_____	_____	_____	
	Subtotal Design Occupant Load for This Story				
_____	_____	_____	_____	_____	
	_____	_____	_____	_____	
	_____	_____	_____	_____	
	_____	_____	_____	_____	
	Subtotal Design Occupant Load for This Story				
_____	_____	_____	_____	_____	
	_____	_____	_____	_____	
	_____	_____	_____	_____	
	_____	_____	_____	_____	
	Subtotal Design Occupant Load for This Story				
_____	_____	_____	_____	_____	
	_____	_____	_____	_____	
	_____	_____	_____	_____	
	_____	_____	_____	_____	
	Subtotal Design Occupant Load for This Story				
TOTAL BUILDING DESIGN OCCUPANT LOAD					_____ ⁽⁶⁾
FOOTNOTES:					
1. Provide the complete name of the Function of Space using the left column of Table 1004.1.2 of the IBC ⁽¹⁾					
2. Design Area per each occupant of this Function on this Story in either Gross (GSF) or Net (NSF) Square Footage ⁽²⁾					
3. Allowed Floor Areas in SF per Occupant per right column in Table 1004.1.2 of the IBC ⁽³⁾					
4. Divide Column A (2) by Column B (3) for each function and enter result, rounded up to the nearest whole person ⁽⁴⁾					
5. Subtotal all Column C values for this floor to yield the Design Occupant Load ⁽⁵⁾					
6. Total Building Design Occupant Load –sum of all Column D value ⁽⁶⁾					

TABLE 5-7 GENERAL FIRE PROTECTION REQUIREMENTS

SEPARATIONS		
Fireblocking Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 718
Draftstopping Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 718
Smoke Control System Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 909
Smoke Barriers Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 407 and 408
Smoke Partitions Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 407
Fire Partition Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 708
Fire Barrier Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IBC Section 707
ALARM & DETECTION		
Fire Alarm System Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC Section 907
Emergency Alarm System Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC 908
SUPPRESSION		
Standpipes Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC Section 905
Sprinklers Required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC Section 903
Sprinklers Provided	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____
Portable extinguishers required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC 906
Other suppression systems required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC 904
Smoke & heat vents required	Yes <input type="checkbox"/> No <input type="checkbox"/>	per IFC 910
OTHER: (Indicate other provided fire and life safety features not listed above, if any)		

TABLE 5-8 FIRE RESISTANCE RATING OF BUILDING ELEMENTS

BUILDING ELEMENT	RATING AS REQUIRED (in hours)	RATING AS DESIGNED (in hours)	TESTING AGENCY & DESIGN NO. (UL, FM, etc)	DESIGNERS WALL/PARTITION KEY CODE
Primary Structural Frame (per IBC Table 601)	_____	_____	_____	
Bearing Walls Exterior Interior (per IBC Table 601)	_____ _____	_____ _____	_____ _____	_____ _____
Nonbearing Walls & Partitions Exterior Interior (per IBC Table 601 & 602) Note footnote “d” from Table 601.	_____ _____	_____ _____	_____ _____	_____ _____
Floor Construction including supporting beams & joists (per IBC Table 601)	_____	_____	_____	
Roof Construction including supporting beams & joists (per IBC Table 601)	_____	_____	_____	
Fire Walls (per IBC Section 706)	_____	_____	_____	_____
Fire Barriers (per IBC Section 707)	_____	_____	_____	_____
Shaft Enclosures (per IBC Section 713)	_____	_____	_____	_____
Fire Partitions (per IBC Section 708)	_____	_____	_____	_____
Opening & Protective Listing by Category (fire shutters, doors, etc. per IBC Section 716)	_____	_____	_____	_____
Others (as required by Designer)	_____	_____	_____	_____

TABLE 5-9 STRUCTURAL DESIGN INFORMATION**RISK CATEGORY:** _____

IBC Table 1604.5

LIVE LOADSFloor Live Load(s) - List the F_{ll} for each occupancy/use.Occupancy/Use: _____ $F_{ll} =$ _____ PSFOccupancy/Use: _____ $F_{ll} =$ _____ PSFOccupancy/Use: _____ $F_{ll} =$ _____ PSFOccupancy/Use: _____ $F_{ll} =$ _____ PSFRoof Live Load $R_{ll} =$ _____ PSFGround Snow Load $p_g =$ _____ PSF

IBC Figure 1608.2 (or ASCE 7)

WIND LOADS

Analysis Procedure: _____

ASCE 7 or IBC 1609

Ultimate Design Wind Speed: $V_{ULT} =$ _____ MPH

IBC Fig's. 1609.3(1)-(3)

Exposure Category: _____

IBC 1609.4.3

Internal Pressure Coefficient: $GC_{pi} =$ _____

ASCE 7

External Pressure Coefficient: $GC_p =$ _____

ASCE 7

Protection of Openings Required Yes ☐ No ☐

IBC 1609.1.2

If "Yes", check one: Impact Resistant Glazing ☐Impact Resistant Covering ☐**SEISMIC LOADS**Seismic Importance Factor: $I_e =$ _____

ASCE 7 Table 1.5-2

Site Class: _____

IBC 1613.3.2

Mapped Spectral Response Accelerations:

 $S_s =$ _____ $S_1 =$ _____

Design Spectral Response Acceleration Parameters:

 $S_{DS} =$ _____ $S_{D1} =$ _____

Seismic Design Category: _____

IBC Tables 1613.3.5(1) & 1613.3.5(2)

Basic Seismic Force Resisting System: _____

ASCE 7 Chapter 12

Design Base Shear: _____ KIPS

Seismic Response Coefficient(s): $C_s =$ _____

ASCE 7

Response Modification Factor(s): $R =$ _____

ASCE 7

Analysis Procedure: _____

ARCHITECTURAL-MECHANICAL-ETC. LOADS

Provide as applicable: architectural items, mechanical, plumbing, etc. per ASCE 7

SPECIAL LOADS

Provide as applicable: abnormal items, moving loads, impact, hoisting, etc. per ASCE 7

*per IBC Chapter 16 and ASCE 7 -- Information may be shown on initial Structural Sheet of the drawings or on Sheet with other code information. List floor design loads on structural plans.

TABLE 5-10 PLUMBING INFORMATION

<u>WATER SYSTEM:</u> Service Line Size: _____ Inches Peak Flow: _____ GPM Total Demand: _____ No. Fixture Units				
<u>SANITARY SEWER SYSTEM:</u> Loading: _____ GPD Service Line Size: _____ Inches Slope: _____ min inches/ft				
<u>MINIMUM PLUMBING FIXTURES REQUIRED/PROVIDED</u> (Per IPC Section 403 & Table 403.1) Occupancy Classification(s) (as shown in Table 5-3): _____ Total Building Design Occupant Load (as shown in Table 5-6): _____				
1. Occupancy: _____ Total Load for this Occupancy: _____ Male: _____ Female: _____				
	Male-REQUIRED	Male-PROVIDED	Female-REQUIRED	Female-PROVIDED
Water Closets	_____	_____	_____	_____
Lavatories	_____	_____	_____	_____
Urinals*	_____	_____	_____	_____
OTHER FIXTURES (Per IPC Section 403 & Table 403.1)			REQUIRED	PROVIDED
Drinking Fountains			_____	_____
Unisex Toilet			_____	_____
Service Sink			_____	_____
Other (list) _____			_____	_____
2. Occupancy: _____ Total Load for this Occupancy: _____ Male: _____ Female: _____				
	Male-REQUIRED	Male-PROVIDED	Female-REQUIRED	Female-PROVIDED
Water Closets	_____	_____	_____	_____
Lavatories	_____	_____	_____	_____
Urinals*	_____	_____	_____	_____
OTHER FIXTURES (Per IPC Section 403 & Table 403.1)			REQUIRED	PROVIDED
Drinking Fountains			_____	_____
Unisex Toilet			_____	_____
Service Sink			_____	_____
Other (list) _____			_____	_____
3. Occupancy: _____ Total Load for this Occupancy: _____ Male: _____ Female: _____				
	Male-REQUIRED	Male-PROVIDED	Female-REQUIRED	Female-PROVIDED
Water Closets	_____	_____	_____	_____
Lavatories	_____	_____	_____	_____
Urinals*	_____	_____	_____	_____
OTHER FIXTURES (Per IPC Section 403 & Table 403.1)			REQUIRED	PROVIDED
Drinking Fountains			_____	_____
Unisex Toilet			_____	_____
Service Sink			_____	_____
Other (list) _____			_____	_____

* Urinals – See IPC 419.2

Overall Thermal Transfer Value (OTTV): _____ BTU/(HR x °F x SF)

Building Cooling Load: _____ SF / Ton

Building Heating Load: _____ BTU/(HR x SF)

Glass: _____ U Factor: _____ Window to wall ratio: _____
 Insulation Values: _____ Roof: _____ Exterior Walls: _____

MECHANICAL SYSTEMS, SERVICE SYSTEMS & EQUIPMENT

(The above data shall be considered a minimum and any special attribute required to meet the mechanical codes.)

SERVICE TRANSFORMER:

☐ By Utility Company ☐ By Agency
(if by Agency) _____ KVA Primary
_____ Voltage/Phase

Service Voltage/Phase:	_____	Amperes
Service Entrance Conductors Size:	_____	Quantity per Phase
Total Connected Load:	_____	KVA
Estimated Maximum Demand:	_____	KVA
Available Fault Current in Symmetrical Amperes:	_____	
Interrupting Capacity of Service Overcurrent Device:	_____	
Grounding Electrode System Components:		(NEC 250)

Emergency Generator: Yes ☐ No ☐ _____ KVA _____ Voltage/Phase _____ Fuel

Exit/Emergency Lights Backup Power ☐ Integral Battery ☐ Generator

Fire Alarm System: ☐ Manual ☐ Automatic ☐ Addressable ☐ Class A ☐ Class B

COMMUNICATIONS COORDINATED ☐ Yes ☐ Not Required

Chapter 5 - Tables

TABLE 5-13 DESIGN-RELATED CONSTRUCTION PERMITS/APPROVALS

The following list is not all-inclusive of every, permit and standards applicable to each project. Agencies and A/Es must delete non-applicable listings and add others for each specific project.

TYPE OF DEVELOPMENT	SC LAW OR REG.	WHERE TO OBTAIN PERMIT/APPROVAL	STATUS
Air pollutant discharge	48-1-100; R61-62.1	SCDHEC - Air Quality Control	_____
Ambulatory surgical facilities	R61-91	SCDHEC - Health Facilities Construction	_____
Asbestos abatement	R61-86.1	SCDHEC - Air Quality Control	_____
Building construction, Zoning	6-7-10; 6-9-110	Local Authority	_____
Community residential care facilities	R61-84	SCDHEC - Health Facilities Construction	_____
Construction in critical coastal areas	48-39-10, 130, 190	SCDHEC - OCRM	_____
Construction in navigable waters	49-1-16	SCDHEC - Water Pollution Control	_____
Dams and reservoirs	49-11-200; R72-1, 2, 3	SCDHEC - Water Pollution Control	_____
Demolition of Real Property	R61-86.1	SCDHEC - Air Quality Control	_____
Design Review Board (BARs, SC Dept Archives & History, etc.)	Various local	Various local	_____
Educational facilities (K - 12)	59-23-210	SC Dept. of Education – Office of District Facilities Mgmt.	_____
Elevators	41-16-90	SC Department of LLR	_____
Fire Department (Local)	Various local	Servicing Fire Department	_____
Fire Protection Sprinkler	40-10	State Fire Marshal	_____
Fire suppression systems	R71-8303	State Fire Marshal	_____
Floodplains, construction in	OSE Manual Chpt 5	Office of State Engineer	_____
Food service establishments	R61-25	SCDHEC – Local County Health Dept.	_____
Historical building rehabilitation	R12-125	Archives and History, Local Authority	_____
Hospitals & infirmaries	R61-16	SCDHEC - Health Facilities Construction	_____
Road encroachment, local	57-7-60	Local City or County Authority	_____
Road encroachment, state	57-5-1080	Local SCDOT Maintenance Office	_____
Sanitary sewer; treatment & disposal	R61-56, 57	SCDHEC – Domestic Wastewater	_____
Storm water discharge, erosion and sediment control	R61-9; R72-100-108	SCDHEC – Water Pollution Control; State Engineer; Local Authority	_____
Swimming areas, natural public	R61-50	SCDHEC – Water Supply Construction	_____
Swimming pools, public	R61-51	SCDHEC – Water Supply Construction	_____
Underground storage tanks	R61-92	SCDHEC – Groundwater Protection	_____
Waste discharge (sewage, industrial waste, etc.)	48-1-100, 110; R61-9	SCDHEC – Water Pollution Control	_____
Water supply	44-55-40; R61-57, 58	SCDHEC – Water Supply Construction	_____
Wells, Underground injection	R61-71, 87	SCDHEC – Groundwater Protection	_____

For completion of this Table in the Bid Documents Stage it must indicate the status of each permit by insertion of “approved” and date in the status column. If not approved, indicate pending approval, phased approval and who (A/E, Agency, Contractor or Other) is to provide that documentation and anticipated date.

TABLE 5-14 STATEMENT OF SPECIAL INSPECTIONS

The Designer(s) of Record shall determine the material and/or work on the project requiring Special Inspections. The Special Inspection requirements shall be based on Section 1705 of the 2015 International Building Code. Any deviations from the requirements of Section 1705 must be approved by OSE

PROJECT NAME: _____				
PROJECT NUMBER: _____				
MATERIAL	TYPE OF INSPECTION	FREQUENCY	SPECIFICATION REFERENCE	INSPECTION BY
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(Insert in Project Manual)

CHAPTER 5

DESIGN/CONSTRUCTION DOCUMENT & CONSTRUCTION STANDARDS

SUB-CHAPTER 5.1

BUILDING CODES, STANDARDS, REGULATIONS AND PERMITS

5.1.1 RELATED STATUTORY AUTHORITY

- A. SC Code § 6-7-830 requires the State to comply with local zoning ordinances.
- B. SC Code § 6-9-110 exempts the State from any county, municipal or local ordinance or regulation that requires the purchase or acquisition of a permit, license, or other device used to enforce any building standard.
- C. SC Code § 10-1-180 provides that all construction, improvement, and renovation of state buildings shall comply with all applicable standards as specified in the Manual for Planning and Execution of State Permanent Improvements Part II. The State Engineer shall determine the enforcement of the aforementioned codes and referenced standards on state buildings.
- D. SC Code § 23-43-10 et. seq., "South Carolina Modular Buildings Construction Act," requires that all Modular Buildings be certified by the South Carolina Buildings Code Council.
- E. SC Code § 10-5-210 et. seq., "South Carolina Accessibility Act," sets accessibility standards for public buildings.
- F. The South Carolina Energy Independence Act of 2007 requires that all major facilities projects not exempted by the act be designed and constructed to achieve at least LEED Silver certification from the US Green Building Council or at least two globes certification using the Green Building Initiative's Green Globes rating system.
- G. The South Carolina Energy Standards Act of 2009, as modified by 2012 Act 143, requires that all buildings be designed and constructed in compliance with the 2009 International Energy Conservation Code.
- H. Governor's Executive Order No. 82-19 requires the State Engineer to assure compliance with the "State of South Carolina Building Standards in Floodplain Areas".

5.1.2 AUTHORITY HAVING JURISDICTION

- A. The State Engineer is the authority having jurisdiction over state buildings and determines the enforcement and interpretation of codes and standards applicable to those buildings.
- B. The State Engineer is also the flood plain coordinator for state construction in flood hazard areas.
- C. The requirement to obtain any local Business License, if applicable, is the responsibility of both the A/E and the Contractor.

5.1.3 CODES AND STANDARDS

- A. Starting July 1 2016, State design and construction must comply with the codes and standards, along with their published errata and other requirements listed in this Chapter.
- B. If there is any conflict between the codes, standards, and/or regulations listed herein, the more stringent requirement controls.
- C. Designers and Agency reviewers should ensure they have the latest errata for indicated editions to International Codes, other codes and standards.
- D. Codes editions in force at the time of first submittal govern throughout the project, unless:
 - 1. Otherwise permitted by OSE; or
 - 2. Design is delayed for more than 6 months and OSE adopts editions that are more current in the interim. No project may use a code that is older than one previous adopted edition.
- E. In accordance with SC Code Ann §§ 1-34-10 thru 70 & § 10-1-180, OSE has adopted the following codes:
 - 1. International Building Code (IBC), 2015 Edition,
 - 2. International Existing Building Code (IEBC), 2015 Edition,
 - 3. International Fire Code (IFC), 2015 Edition,
 - 4. International Energy Conservation Code (IECC), 2009 Edition,
 - 5. International Fuel Gas Code (IFGC), 2015 Edition,

6. International Mechanical Code (IMC), 2015 Edition,
7. International Plumbing Code (IPC), 2015 Edition, with the following insertions:
 - a. Section 305.4.1, insert “18” and insert “18”
 - b. Section 903.1, insert “8”
8. International Private Sewage Disposal Code (IPSDC), 2015 Edition,
9. International Property Maintenance Code (IPMC), 2015 Edition,
10. International Residential Code for One and Two Family Dwellings (IRC), 2015 Edition, with the following insertions:
 - a. P2603.5.1, insert “12” and insert “24”
11. International Wildland – Urban Interface Code (IUIWIC), 2015 Edition,
Note: The IUIWIC does not supersede existing statutory requirements.
12. International Code Council Performance Code (ICCP), 2015 Edition, upon State Engineer’s approval.
13. International Swimming Pool and Spa Code (ISPS), 2015 Edition,
14. Standard for Bleachers, Folding and Telescopic Seating, and Grandstands, ICC 300-2012 Edition
15. National Electrical Code (NEC) [NFPA-70], 2014 Edition
16. National Electrical Safety Code, IEEE-C2-2012 Edition
17. Latest edition of the American National Standards Institute, Inc. (ANSI) document A117.1, Accessible and Useable Buildings and Facilities. Note that this standard is the standard adopted by the South Carolina Accessibility Act but this requirement does not relieve the Agency or the design professional from the Federal Statutory requirements that design and construction comply with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities. See <http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards>
18. State Fire Marshal rules, regulations, and policies. See <http://www.scfiremarshal.llronline.com>
19. South Carolina Elevator, Code, & Regulations.¹:
 See <http://www.llr.state.sc.us/Labor/ElevatorAmusement/index.asp?file=bungee.htm>
20. State of SC Telephone Equipment Room and Communications/Data Systems Policies as formulated by the Division of State Information Technology (DSIT).
21. Governor’s executive Order No. 82-19 (April 1982) – State of SC Building Standards in Floodplain Areas.
22. The South Carolina Modular Buildings Construction Act S.C. Code § 23-43-10 et. Seq.

5.1.4 FLOOD HAZARD AREA DEVELOPMENT - Governor’s Executive Order No. 82-19

A. General Requirements

The "State of South Carolina Building Standards in Floodplain Areas" requires compliance with the criteria in Title 44, Code of Federal Regulations, Parts 60.3 and 60.5. See <https://www.gpo.gov/fdsys/pkg/CFR-2011-title44-vol1/pdf/CFR-2011-title44-vol1-sec60-3.pdf>. Copies of these Parts are available from the State Coordinator’s Office for the National Flood Insurance Program (NFIP).

B. Applicable Definition

FLOOD HAZARD AREAS are those areas identified by the Federal Emergency Management Agency (FEMA) on Flood Insurance Rate Maps (FIRMs) or Flood Hazard Boundary Maps (FHBMs) that are subject to inundation by a 100- year flood. (Any Zone A or Zone V is a flood hazard area.)

C. Permitting

1. Where a project provides for new construction or improvement to an existing structure in a flood hazard area, the Agency must submit to the OSE Project Manager the SE-510, Permit to Develop in a Flood Hazard Area. For project within the Agency’s Construction Contract Award Certification, submit the form directly to the State Engineer.
2. The Agency should submit its application at the earliest opportunity, preferably at the time of schematic document submittal.

¹ The SC Elevator Code references the American Society of Mechanical Engineers Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, and supplements thereto, ASME A17.1.

3. The Agency must obtain this permit prior to starting construction.
4. If the Agency intends to construct a non-residential structure with the first floor below the base flood elevation, the Agency must design the structure as a flood-proof structure and submit a Floodproofing Certificate, FEMA Form 81-65, to OSE with the Construction Documents Submittal.
5. For Historic Structures that are listed, eligible to be considered for listing or a contributing property to a listing in the National Register of Historic Places, a modified Permit may be issued. The Agency must submit documentation from the State Historic Preservation Office (SHPO) to verify the status of the building and provide details to what extent the building will be floodproofed without compromising the historical listing.

D. Permit Requirements

1. The Agency, with the assistance of the A/E, must provide all information required on the SE-510, Permit to Develop in a Flood Hazard Area, or designate it as not applicable.
2. The Agency must include all required forms and certifications with the submittal to OSE.
3. The Agency must submit the following certifications when required for structures constructed in a flood hazard area:
 - a. No-Rise Certification required for development in a regulatory floodway: A registered professional engineer must furnish the certification and supporting technical data.
 - b. Elevation Certification (FEMA Form 81-31) required for structures in an A-zone or V-zone: A registered land surveyor must furnish this certification. Submit this form to OSE as soon as the lowest floor is completed.
 - c. Floodproofing Certificate (FEMA Form 81-65) for non-residential flood proofed structures in an A-zone: A registered professional engineer or architect must furnish this certification to OSE with the SE-510, Permit to Develop in a Flood Hazard Area.
 - d. V-Zone Certification required for structures in a V-zone: A registered professional engineer or architect must furnish this certification, using the SC Department of Natural Resources form. Submit this certification to OSE with the SE-510, Permit to Develop in a Flood Hazard Area.
4. The Agency and A/E may find these forms through the OSE website.

E. Permit Variance

1. Only the Floodplain Variance Board, at the request of OSE, may grant a variance permit to the Flood Hazard Area development requirements.
2. If the Agency wants to pursue a variance, it must send a written request to the State Engineer that contains the following information:
 - a. The particular floodplain management standard which prevents the proposed construction or improvement;
 - b. The characteristics of the property or proposed structure which prevents compliance with the flood management standards;
 - c. The minimum reduction of standards which would be necessary to permit the proposed construction or improvement;
 - d. The particular hardship which would result if all standards were applied;
 - e. Any additional information requested by the State Engineer.

F. Flood Maps

1. The Agency and A/E may purchase Flood Maps from FEMA at:

FEMA Map Service Center	Telephone: (800) 358-9616
PO Box 1038	Fax Number: (800) 358-9620
Jessup, MD 20794-1038	
Or http://msc.fema.gov/portal	
2. The Agency and A/E may review Flood Maps at the following locations:

State Coordinator's Office for the NFIP
Rembert C. Dennis Building
1000 Assembly Street
Columbia, SC 29201 (803) 734-9103

3. Flood maps for specific sites may be available for review at the local community planning, zoning or engineering office or at the local Natural Resources Conservation Service office.

G. Publications

The Agency and A/E may obtain all publications and forms at the following locations:

Federal Emergency Management Agency	State Coordinator's Office for the NFIP
PO Box 2012	SC Department of Natural Resources
Jessup, MD 20794-2012	1000 Assembly Street
Attn: Publications	Columbia, SC 29201
Phone: (800) 480-2520	Phone: (803) 734-9103 Fax: (803) 734-9106
http://msc.fema.gov/portal	

5.1.5 INFORMATION TECHNOLOGY REQUIREMENTS SC Code Ann § 11-35-820

- A. The Agency must notify the Division of Technology Operations of all construction projects involving repair, modification, or installation of building communications systems, including telephone equipment rooms at the following address:

Department of Administration - Division of Technology Operations
 4430 Broad River Road
 Columbia, SC 29210
 Phone: (803) 896-0001
 Toll Free: (800) 922-1367
 Email: servicedesk@admin.sc.gov
- B. This notification should occur as early as possible in the project planning process to enhance coordination during design and construction and to minimize delays and rework.

5.1.6 EXISTING STRUCTURES - SPECIAL CONSIDERATIONS

A. Applicable Code

The International Existing Building Code (IEBC), 2015, applies to the repair, alteration, change of occupancy, addition, relocation of all buildings.

B. Hazardous Materials

1. The Agency should test for hazardous materials in any building or part of a building that it plans to repair or alter.
2. The Agency must comply with all State and Federal Regulations regarding testing for, abating, handling, and disposing of hazardous materials.
3. Asbestos Building Inspection Requirements (per Regulation R61-86.1, Section VI A):
 1. Prior to beginning a renovation or demolition operation at any facility, the facility owner and/or owner's representative shall ensure that an asbestos building inspection is performed to identify the presence of ACM.
 2. The asbestos building inspection shall include the facility or part of the facility affected by the renovation or demolition operation.
 3. To be acceptable, a building inspection shall have been performed no earlier than three years prior to the renovation or demolition, or, if more than three years have elapsed since the most recent inspection, the previous inspection shall be confirmed and verified by a person licensed as a building inspector.

C. Historic Building Modifications – SC Code Ann §§ 60-12-10 thru 60-12-90

1. An historic building is a building listed on National Register of Historic Places. South Carolina law encourages state agencies and institutions to preserve National Register-listed properties they own or lease by establishing a consultation process with the State Historic Preservation Office (SHPO). The process is designed to incorporate historic preservation concerns with the needs of state projects. Agencies are encouraged to consult with SHPO on properties that are eligible for listing on the National Register.
2. The Agency and A/E should prepare a plan of action for a project on an historic building using one or more of the four distinct standards of treatment of historic properties—Preservation, Rehabilitation, Restoration or Reconstruction.

3. The Agency and A/E should use The Secretary of the Interior's Standards for the Treatment of Historic Properties and The Secretary of the Interior's Standards for Rehabilitation & Guidelines for Rehabilitating Historic Buildings in formulating the plan of action.
4. With the Agency's and A/E's input, OSE, in conjunction with SHPO and other interested state agencies, will determine the requirements for the renovation of historic buildings.
5. The Agency may request a meeting with OSE for this purpose prior to or concurrently with the submittal of the Schematic Design phase documents.

D. Seismic Requirements

1. When the Agency plans alterations to a building, the Agency must consult with OSE to determine if the IEBC requires a preliminary seismic evaluation. The Agency should obtain this determination before it concludes the fee negotiations with the selected A/E.
2. When required by OSE, a structural engineer must perform the preliminary seismic evaluation of the existing building or structure(s) and prepare a report. A preliminary seismic evaluation is a Tier 1 evaluation in accordance with ASCE/SEI 41-13 Seismic Evaluation and Retrofit of Existing Buildings (as referenced in the ICC).
3. The preliminary evaluation must include the complete examination of all available documents pertaining to the design and construction of the building and an "on-site" examination of the structural system(s) to verify the building was constructed in accordance with the documents.
4. The structural engineer must base the Tier 1 evaluation on the following minimum requirements:
 - a. Except as set forth in (b) below, a Life Safety (LS) level of performance;
 - b. If the facility is an "Essential Facility," an Immediate Occupancy (IO) level of performance (Category IV, Table 1604.5 of the IBC provides a listing of "Essential Facilities"); and
 - c. When soil properties are unknown as to site class, the engineer must use Site Class D unless the engineer determines that Site Class E or F is likely. See IBC Chapter 16.
5. After performing a seismic evaluation, the structural engineer must prepare a final report that includes the following:
 - a. The scope of the investigation;
 - b. The site and building data including a general building description, structural system description (framing, lateral-force-resisting-system), floor & roof diaphragm construction, and basement and foundations systems;
 - c. Nonstructural systems description (all nonstructural elements affecting seismic performance);
 - d. Building Construction Type;
 - e. Performance Level;
 - f. Level of Seismicity;
 - g. Soil Type
 - h. List of Assumptions: (material properties and site soil conditions); and
 - i. Findings: (a prioritized list of deficiencies)
6. The Agency must submit a copy of the preliminary seismic evaluation report to OSE at the Schematic Design phase. OSE, in consultation with the Agency, will determine the extent to which seismic retrofitting shall be included in the renovation project.

E. Accessibility by the Physically Disabled - SC Code § 10-5-210 et. seq

1. If in the opinion of the A/E, the building cannot provide accessibility to the physically disabled due to technical unfeasibility, the A/E must provide, during Schematic Design submittal:
 - a. A prioritized list of deficiencies,
 - b. The reasons supporting a finding of technical unfeasibility, and
 - c. Design alternatives
2. After reviewing the Schematic Design, OSE may consider "technical infeasibility" as an acceptable rationale for less than full compliance.

5.1.7 MODULAR BUILDINGS - SC Code §§ 23-43-10 et. seq

- A. Modular buildings are buildings of closed construction, other than mobile or manufactured homes, constructed off- site in accordance with applicable codes, and transported to the point of use for installation or erection.
- B. Installation of modular buildings is construction work that must meet the same requirements as new construction. The codes cited in paragraph 5.1.3 of this Manual are applicable.
- C. The Agency and A/E should give specific attention to design of foundations (for seismic and wind loading).
- D. The Agency must comply with Chapter 10 of this Manual when moving state-owned modular buildings.

5.1.8 PROHIBITED BUILDING MATERIALS**A. Fire Retardant Treated Wood:**

Due to the significant expense the State has incurred removing and replacing failed fire retardant treated wood in structural applications, the Agency may not use fire retardant treated wood, regardless of treatment process, in State buildings. However, with OSE approval, the Agency may use fire retardant treated wood in low humidity locations for non-structural purposes.

B. Hazardous Materials:

The Agency may not use hazardous materials on state projects without prior approval from OSE, even if the law allows such use.

A. High Impact Resistant Gypsum Wallboard:

High impact resistant gypsum wallboard may not be used in State buildings unless prior approval is obtained from OSE. If OSE approves high impact resistant gypsum wallboard, the Agency must indicate its use in an appropriate location readily visible and approved by the Fire Authority having Jurisdiction.

5.1.9 DESIGN RELATED CONSTRUCTION COORDINATION, PERMITS AND APPROVALS

- A. The Agency is responsible for obtaining all design and construction related permits and approvals from other authorities having jurisdiction over the project.
- B. State law requires the Agency to comply with local zoning ordinances as they affect the use and appearance of buildings.
- C. The Agency will need to contact other authorities, including local and state authorities, to obtain permit requirements. Table 5-13 provides a listing of design-related permits the Agency may be required to obtain.
- D. The Agency must be sure and have the A/E incorporate the requirements of all authorities having jurisdiction into the construction documents.
- E. The Agency must either provide OSE with copies of all design related permits and approvals or with certification that the Agency has obtained them prior to applying for a building permit.

5.1.10 ENERGY CONSERVATION AND SUSTAINABLE CONSTRUCTION – SC Code Ann §§ 48-52-810 thru 860

- A. All projects meeting the definition of a major facility project must be designed to achieve at least LEED Silver certification from the US Green Building Council or at least two globes certification using the Green Building Initiative's Green Globes rating system.

B. Major Facilities Projects are:

- 1. State-funded projects for new construction in which the building to be constructed is larger than 10,000 gross square feet;
- 2. State-funded projects for renovation of a facility in which the renovation will cost more than 50% of the replacement value of the facility or the renovation involves a change in occupancy; and
- 3. State-funded projects for commercial interior tenant fit-out where the leasable area to be fitted out is greater than 7,500 square feet.

C. Exemptions

Major facilities projects do not include the following:

- 1. Any building that does not have conditioned space as defined by ASHRAE's Standard 90.1;
- 2. Any public school building (grades K – 12) as defined in SC Code § 59-1-50;
- 3. Any correctional facility constructed for the Department of Corrections, Department of Mental Health, or Department of Juvenile Justice;

4. Any building funded by the Department of Health and Environmental Control with the primary purpose of storing archived documents; or
5. Any building funded the State Ports Authority, the Coordinating Council for Economic Development, or the State Infrastructure Bank.

D. Special Considerations for Renovation and Tenant Fit-out Projects

1. For renovation and commercial interior tenant fit-out projects meeting the definition of major facilities project, the Agency must analyze the project using a life cycle cost analysis of the projected capital and operational cost over 30 years.
2. The analysis must compare the costs and benefits of designing, constructing, maintaining, and operating the facility at (1) the LEED Silver standard or two globes standard, or better, with certification; (2) normal industry and regulatory standards; or (3) some standard between (1) and (2) that causes the project to be designed and constructed in a manner that achieves the lowest thirty-year life cycle cost.
3. The Agency must include the 30 year life cycle cost analysis with their Phase II PIP Application.

E. Energy Performance Requirements

1. MAJOR FACILITY PROJECT DESIGNED TO ACHIEVE TWO GLOBES CERTIFICATION: The A/E must design the project to earn at least 20% of the available points for energy performance under Green Globe's rating system "C.1.1 Energy Consumption."
2. MAJOR FACILITY PROJECT DESIGNED TO ACHIEVE LEED SILVER CERTIFICATION: The A/E must design the project to earn at least 40% of the available points for energy performance under UBGC's rating system "EA Credit 1: Optimize Energy Performance."

F. Waiver of Energy Performance Requirements

1. The Agency may request a waiver of the Energy Performance requirements in Part 5.1.10E from OSE.
2. A waiver requires OSE's determination that meeting the energy performance requirements is not economically feasible.
3. If the Agency desires a waiver, the Agency must submit to OSE documentation showing that the incremental cost of achieving the energy performance requirements cannot be amortized over a period of 20 years.

G. Reporting Requirements

The Agency must make the following reports to OSE and the Energy Office:

1. Upon final completion of a project: Submit to the Energy Office a description of all potential environmental benefits, including, but not limited to, water resources savings and reduction of water waste. The Agency may obtain this information from the facility designer.
2. Upon certification of a facility: Submit to OSE the level of LEED or Green Globe certification achieved for facility.
3. Annually Submit to the Energy Office:
 - a. A report of actual savings in energy cost for all major facilities designed and constructed to the standards of the Energy Conservation and Sustainable Construction Act;
 - b. Any conflicts or barriers that hinder the effectiveness of the Energy Conservation and Sustainable Construction Act.
4. In the 5TH, 10TH, and 15TH year following certification of a facility: Submit to the Energy Office a report on the ability of the facility to continue to operate at the standard to which it was originally certified.

5.1.11 GREEN PURCHASING INITIATIVE

- A. South Carolina has adopted a Policy encouraging Green Purchasing. This Part includes a statement of that policy and standards in the policy specific to construction.
- B. The entire policy is available at <http://procurement.sc.gov/PS/agency/PS-agency-green-purchasing.phtml>.
- C. Agencies should consider this policy and discuss it with their Architect-Engineer for purposes of incorporating sustainable construction practices in all of their projects

D. Statement of Policy

1. South Carolina state government seeks to further reduce the environmental and human health impacts of its operations by integrating environmental considerations into its procurement process.
2. South Carolina state government is committed to environmentally preferred purchasing in recognition of the need to more efficiently use natural resources, reduce waste, save money, sustain markets for materials collected in recycling programs and protect South Carolina's environment, economy and the quality of life of all its citizens.
3. Therefore it is the policy of the state of South Carolina to endeavor to:
 - a. improve or implement green purchasing practices that reduce waste and result in the purchase of fewer products, when practicable and cost effective, without reducing the safety or quality of the products;
 - b. make purchasing decisions with the understanding and consideration of the environmental impact and life cycle cost of a product or service during its manufacture, transport, use and end-of-life management;
 - c. identify and purchase products and services that prevent pollution, eliminate or reduce toxins, conserve energy and water, contain recycled-content material and minimize environmental impacts; and
 - d. purchase from South Carolina businesses to minimize transportation costs and emissions, when it can be done with adequate competition and without compromise of performance or quality of products or services.
4. This Policy applies to all South Carolina state agencies and publicly funded colleges and universities and others defined as governmental bodies per SC Code Section 11-35-310(18) (www.scstatehouse.gov/code/tit11.htm).
 - a. Vendors, contractors and grantees will comply with applicable sections of this policy for products and services that are provided to the state of South Carolina.
 - b. All purchases under this policy are subject to local, state or federal requirements as applicable.
 - c. Nothing in this policy should be construed as requiring a state agency or publicly funded college or university to procure products that do not perform according to their intended use or reduce safety, quality, or effectiveness.

E. Standards Specific to Construction

1. GREEN BUILDING PRACTICES - Consider a whole-systems approach to the design, construction, and operation of buildings and structures that help mitigate the environmental, economic, and social impacts of construction, demolition, and renovation. Green Building Practices such as those described in the LEED or Green Globe Rating Systems, recognize the relationship between natural and built environments and seeks to minimize the use of energy, water, and other natural resources and provide a healthy productive environment.
2. GREEN BUILDING CONSTRUCTION
 - a. Consider the use of on-site renewable energy such as solar, wind, geothermal and biomass to reduce impacts of fossil fuel use.
 - b. Consider deconstruction and re-use of materials or purchase previously used or salvaged building materials to reduce waste and the need for virgin materials.
 - c. Reduce the depletion of finite raw materials by using rapidly renewable materials such as bamboo, wool, cotton, linoleum and cork.
 - d. Maximize the use of natural lighting in buildings to avoid the use of artificial lighting.
 - e. Develop a plan for measurement of building water and energy consumption to provide ongoing accountability of actual usage.
 - f. When renovating space, plan for flexibility and future change by using easily moved walls, outlets, etc.
 - g. Consider short-term and long-term costs in specifying material and equipment. This includes an evaluation of the total costs expected during the life of the material and equipment.
3. GREEN LANDSCAPING
 - a. Provide for recycled-content materials for hardscape and landscape structures.
 - b. Reduce water used for irrigation by using plants that are native to the area where they are planted and drought-tolerant plants that require minimal or no watering once established.

- c. Reduce water pollution and heat-island effect by reducing the amount of impervious surfaces in the landscape. Permeable substitutes such as pervious concrete or pavers are preferred for walkways, patios, driveways and low-volume traffic areas.
- d. Reduce light pollution by only lighting areas to the level required for safety and comfort.

5.1.12 REQUIRED INSPECTION SERVICES

- A. The Agency must provide for the construction inspection services required by Chapter 1 of each International Code Council Series of Codes adopted in 5.1.3 above, and special inspection services required in Chapter 17 of the IBC.
- B. A listing of Inspection Service firms on statewide term contract is located at <http://procurement.sc.gov/PS/agency/PS-ose-contracts.phtm>.

5.1.13 NON-RESTRICTIVE SPECIFICATIONS

- A. State Procurement Law requires nonrestrictive specifications.
 - 1. Do not list one product/manufacture and “or equal.”
 - 2. Determine the essential features of the product used as the basis of design and, unless there is only a single source (sole source) for products meeting the essential features of the basis of design, list multiple products and their manufacturers that meet these features.
 - 3. Ensure all listed products/manufacturers (and appropriate model numbers) meet all the essential features. A product should not be listed contingent on a subsequent determination by the A/E that it meets the essential features of the basis of design.
 - 4. Alternatively, identify the essential features and provide that any product/manufacture who meets the essential features can be approved utilizing substitution rules set forth in the procurement.
- B. If the agency wishes to pursue a sole source procurement, see section 8.4

CHAPTER 5

DESIGN/CONSTRUCTION DOCUMENT & CONSTRUCTION STANDARDS

SUB-CHAPTER 5.2

DESIGN AND CONSTRUCTION DOCUMENT SUBMITTALS TO OSE

5.2.1 RELATED STATUTORY AUTHORITY *(See also authority listed in Part 5.1)*

- A. SC Code § 11-35-2720 permits the Chief Procurement Officers to prepare or review, issue, revise and maintain the specifications for supplies, services, and construction required by the State.
- B. SC Code § 11-35-2730 requires that all specifications shall be written to assure cost effective procurement of the State's actual needs and shall not be unduly restrictive.
- C. SC Code § 11-35-2740 permits the Chief Procurement Officers to delegate in writing to a using agency the authority to prepare and utilize its own specifications. The specifications must assure maximum cost-effective procurements that are consistent with regulations promulgated by the SFAA.
- D. SC Code § 11-35-2750 requires that specifications prepared by architects and engineers shall be nonrestrictive and shall maximize the cost effectiveness of all procurements.
- E. SC Code § 40-3-280 and SC Regulation 11-11 requires all construction documents to bear a seal of a licensed architect, when required to be prepared by a licensed architect.
- F. SC Code § 40-22-270 requires all construction documents bear a seal of a licensed engineer, when required to be prepared by a licensed engineer.
- G. SC Code § 40-10-250 requires a Fire Sprinkler System Specification Sheet to be completed for every fire sprinkler system to be installed in South Carolina.

5.2.2 DOCUMENT SUBMITTALS TO OSE

- A. Agencies or their architects or engineers (A/E) must submit Schematic Design and Construction Documents to OSE for their review and approval in accordance with the procedures of this chapter. The term "A/E" in this chapter means the individual or firm preparing the Schematic Design, Design Development, and Construction Documents.
- B. OSE will not review drawings and documents that are incomplete, ambiguous, or difficult to read. OSE will notify the A/E and the Agency of such condition and ask for a revised submission.
- C. OSE's statutory review period does not start to run until it receives a complete, unambiguous, and readable set of drawings and documents.

5.2.3 PROJECT NAME AND NUMBER

- A. The Agency and the A/E must place the project name and number on all project documents and correspondence.
- B. If the project is a PIP, the project name and number is that shown on the Form A-1.
- C. If the project is a Non-PIP, the name is that assigned by the Agency and the project number is that assigned by OSE.
- D. For meanings of Project numbers assigned to PIPs and Non-PIPs see Chapter 1, Part 1.7.5.

5.2.4 DRAWINGS

Drawings submitted to OSE for review shall be submitted in the following format:

- A. Printed and delivered as follows:
 - 1. A final printed font size of 1/8", providing graphic scales on plans, elevations and sections (increase font size as needed to assure legibility at reduced sized printing);
 - 2. A maximum overall paper size of 30" x 42";
 - 3. Drawings and Project Manuals must be bound;
 - 4. A single bound set of drawings must not exceed 25 pounds; or
- B. Emailed in PDF format, if ten or fewer pages and approved by the OSE Project Manager.

5.2.5 PROJECT MANUAL

The Guide for Organizing and Completing the Project Manual - Design-Bid-Build found in Appendix B describes the requirements for organizing the OSE-mandated front-end documents for the typical design-bid-build construction project. The project manual must include the following in the order shown:

- A. Table of Contents
- B. SE-310 – Invitation for Construction Services
- C. AIA A701-1997 Instructions to Bidders- South Carolina Division of Procurement Services, Office of State Engineer Version
- D. Bid Bond – AIA Document A310
- E. SE-330 – Lump Sum Bid Form
- F. AIA Document A101-2007 Standard Form of Agreement between Owner and Contractor - South Carolina Division of Procurement Services, Office of State Engineer Version
- G. AIA Document A201-2007 General Conditions of the Contract for Construction- South Carolina Division of Procurement Services, Office of State Engineer Version
- H. SE-355 – Performance Bond
- I. SE-357 – Labor and Material Payment Bond
- J. Technical Specifications

5.2.6 SPECIAL BIDDING REQUIREMENTS

A. Bid Alternates

- 1. The use of Bid Alternates in bidding can be problematic and should be avoided if possible.
- 2. While an Agency may use add alternates, Alternates may not exceed three (3) in number.
- 3. An Agency should not include any Alternate that the Agency has no reasonable chance of obtaining within the approved construction budget.
- 4. The Agency may accept Alternates in any order or combination and must determine the low Bidder based on the sum of the Base Bid and Alternates accepted. However, an Agency may not subsequently add to a contract by change order an alternate that the Agency did not accept at the time of award, unless the contractor would have been low bidder had the alternate been included in the award.

B. Subcontractor Listing Requirements – SC Code Ann § 11-35-3020(b)(i)

- 1. On page BF-3 of the SE-330, Lump Sum Bid Form, the Agency must list by specialty, certain subcontractors expected to perform work for the prime contractor.
- 2. When bidding this work, the contractor is required to list by name the subcontractor(s) who will perform this work.
- 3. The Procurement Code sets forth the following:
 - a. The Agency, in consultation with the project architect/engineer, **must** identify by specialty the subcontractors:
 - (1) Who **are expected** to perform work for the prime contractor on the project; and
 - (2) Whose subcontracts are expected to exceed three percent (3%) of the prime contractor's total base bid.
 - b. The Agency, in consultation with the project architect/engineer, **may** identify by specialty a subcontractor expected to perform work for the prime contractor which is vital to the project.
 - c. The Agency is to make its identification of subcontractors by specialty in the invitation for bids. On page BF-3 of the SE-330, Lump Sum Bid Form, there is a column provided for this (first column on the left).
 - d. The Agency's **determination** of which subcontractors to list in the invitation for bids is **not protestable**.
 - e. A bidder's listing of subcontractors in response to the invitation for bids **is protestable**.
- 4. If the prime contractor is expected to self-perform an item of work rather than subcontract that item, do not list that specialty on the bid form. For example, if the agency is bidding out an air conditioning project and under the Contractor's Licensing Act only a mechanical contractor with an air conditioning specialty ("AC" sub-classification) can bid the work as a sole prime contractor, do not include air conditioning in the list of specialty subcontractors.

5. The listing of the specialty subcontractor(s) should be clear enough that reasonable potential bidders understand what you are asking for. Keep in mind that the prime contractor must use the listed subcontractor for the listed specialty. If the prime bidders do not have a clear understanding of what work the listed subcontractor is intended to perform, he may have a nasty surprise when it comes to performance.

5.2.7 DESIGN SUBMITTAL REQUIREMENTS

- A. The A/E with Agency's approval must submit the following to OSE for review:
 1. Schematic Design documents and Estimate of Construction Cost, transmitted with the SE-271, Design Document Transmittal Form.
 2. Construction Documents and Final Estimate of Construction Cost, transmitted with the SE-271, Design Document Transmittal Form.
 3. Bid Documents transmitted with the SE-271, Design Document Transmittal Form.
- B. The Agency or its A/E may request additional reviews; however, any such additional reviews shall not count against OSE statutory review time.
- C. All submittals may not be required on all projects. The A/E is to contact the OSE project manager for number of copies and necessary submittals.

5.2.8 OSE REVIEW AND APPROVAL PROCESS

- A. OSE must review design and construction documents for projects exceeding the Agency's construction contract certification. OSE can provide technical assistance to agencies in reviewing design and construction documents within the Agency's certification.
- B. OSE's review of design and construction documents for general compliance with codes does not relieve the Agency or the A/E of responsibility for knowledge of and compliance with all codes and regulations of other governing authorities.
- C. OSE may revoke any approval issued under the provisions of this Manual where OSE based its approval on any false statement or misrepresentation of fact in correspondence, drawings, specifications, or data.
- D. If there is a conflict between the requirements of any code, regulation, or standard regarding safety, health, energy-use compliance, or environmental compliance, the Agency or the A/E should request an interpretation from the OSE project manager.
- E. For scheduling purposes, the Agency and the A/E should allocate a total of 45 days for review of "properly completed" submittals. When the A/E provides a properly completed submittal, the review time will commence from the date of receipt of the submittal by the OSE project manager until the date the review is completed.
- F. OSE will provide written review comments to the Agency and the A/E upon completion of each stage of document review.
- G. If the Agency allows, the A/E may continue to work on the project, at its own risk, during the OSE review periods. This does not relieve the A/E from complying with all OSE comments made during the review periods.

5.2.9 SCHEMATIC DESIGN DOCUMENTS

- A. To assist OSE in understanding the schematic documents, the Schematic Design Document submittal to OSE must include a copy of the programming statement.
- B. To be "Properly Completed" the Schematic Design Documents submittal must meet the following minimum level of project information and project definition:
 1. Complete Tables 5-3, 5-4 and 5-5 to the extent information is known and applicable.
 2. Site Plan showing the following:
 - a. Building;
 - b. Property lines;
 - c. Easements;
 - d. Encroachments;
 - e. Setbacks;
 - f. Streets;
 - g. Parking;

- h. Existing contours;
 - i. Adjacent structures and distance to adjacent structures;
 - j. Utilities;
 - k. Fire apparatus access
 - l. Accessibility
 - m. North Arrow; and
 - n. Other items defining the site (hazards, wetland, fire district, environmental issues, etc.).
3. Drawings showing the following:
- a. Basic Code Review and list of applicable codes and standards
 - b. Individual Spaces with names;
 - c. Life safety plans with wall, floor, and roof rating delineated and complete means of egress delineated with exit capacities
 - d. Elevations sufficient to describe the building;
 - e. Facilities for the physically disabled incorporated within the building; and
 - f. Shaft locations.
4. Unless otherwise agreed to by OSE, the Schematic Design Document review shall be a table top review with the OSE project manager, OSE discipline reviewers, Agency project manager, Architect, and Architect's civil, structural, mechanical, fire protection, and electrical engineering consultants present.

5.2.10 CONSTRUCTION DOCUMENTS

The following project information is required:

- A. Drawings completed, coordinated, and corrected shall have as a minimum; items indicated in the Schematic Design Documents review and additional items that may include:
- 1. Cover/Index
 - a. Abbreviations
 - b. Symbols
 - c. Legends
 - d. Notations
 - e. Location Map
 - 2. Project Code Criteria
 - a. Listing of all Codes applicable to project
 - b. Project Code criteria as contained in Tables 5-1 through 5-12
 - c. UL Design Numbers for Rated Systems.
 - d. All fire and/or smoke-rated elements of the project (such as floors, ceilings, roofs, partitions, barriers and walls) are to be indicated on all disciplines.
 - 3. Civil/Site/Landscape
 - a. Building & Structures: existing and proposed
 - b. Pedestrian & Vehicular accesses: existing and proposed including:
 - (1) Fire Apparatus access
 - (2) Access for disabled
 - c. Parking
 - d. Existing and new utilities
 - e. Landscaping/topography – hard & soft: existing and proposed
 - 4. Architectural Drawings:
 - a. Plans with north arrow (life-safety items are to be submitted as separate plans, unless they are clearly shown on a single floor plan):
 - (1) Roofs
 - (2) Floors

- (4) Accessible routes clearly defined with turning radius and locations and dimensions of accessible fixtures as required by ANSI.
 - (5) Layouts of storage shelving, casework, laboratory equipment, or other specialties
 - (6) Hazard Control areas
 - (7) Shafts and chases with ratings
- b. Life-safety plans including the following:
 - (1) Rated Walls with symbols
 - (2) Rated floors with rating
 - (3) Rated Components
 - (4) Details of Rated Assemblies
 - (5) Egress and Exit Lighting
 - (6) Complete means of egress
 - (7) Exit capacities
- c. Elevations
 - (1) Exterior elevations showing proposed floor-to-floor heights and finish floor elevations
 - (2) Equipment or facilities for the physically disabled
 - (3) Interior elevations of significant features
 - (4) Openings
- d. Sections & Details of construction including wall, shaft, and building sections
- e. Openings, Finish & Other Schedules
- 5. Structural Drawings: as required to illustrate specific building design including sections and schedules including but not limited to the following:
 - a. Foundations
 - b. Columns
 - c. Floor Framing
 - d. Roof Framing
 - e. Structural walls
- 6. Fire Protection Drawings
- 7. Plumbing
 - a. Water
 - b. Sewer
- 8. Mechanical
 - a. HVAC plans as necessary to assure function and compatibility with building fire protection system and fire-rated assemblies
 - b. Mechanical, boiler and other special equipment rooms with equipment layout
 - c. Details and/or sections of vertical risers
 - d. Schedules
 - e. Routing of systems
- 9. Electrical
 - a. Power
 - b. Lighting
 - c. Schedules
 - d. Fire alarm system components
 - e. Communications and information technology components and equipment rooms
 - f. Electrical risers, routing, panel wiring, grounding and other features

10. Other drawings that may be required to fully identify the project including, if not shown elsewhere in the construction documents, drawings showing:
 - a. Approximate size of special equipment (i.e. compressors, generators, transformers, electronic equipment racks, consoles, panels, distributing frames, hoists, and cranes)
 - b. Distance to adjacent buildings
 - c. Unusual Features
- B. Project Manual completed, corrected, and coordinated to include the following:
 1. Table of Contents
 2. Front-end documents
 - a. SE-310, page 1, ready for signature by the OSE Project Manager
 - b. Items identified in section 5.2.5 of this chapter.
 3. Soils Report, Hazardous Materials Reports and other informational data pertinent to the project
 4. Specifications
 - a. Technical Specifications
 - b. The documents shall include the Fire Sprinkler System Specification Sheet, as published by the State Fire Marshal. The Fire Sprinkler System Specification Sheet shall be prepared, sealed, signed and dated by the projects fire protection engineer who shall be a South Carolina licensed professional engineer.
- C. Other Documents:
 1. Additional narrative, schedule, calculations, drawings and information required to demonstrate to OSE and Agency a thorough understanding of the project and compliance with codes.
 2. Documents showing design compliance with the International Energy Conservation Code (IECC- 2009), for commercial buildings or portions thereof (not otherwise exempted). May be achieved by the following methods:
 - a. Meeting mandatory and prescriptive requirements of sections 502 (Building Envelope), 503 (Mechanical Systems), 504 (Water Heating), and 505 (Power and Lighting), or by satisfying the corresponding provision(s) in ASHRAE 90.1-2007 (Chapters 5 through 10) and by providing supporting documents (worksheets, forms, calculations, etc.) for each chapter or section.
 - b. Alternatively, provided that all IECC mandatory provisions have been met, compliance may be demonstrated using section 506, “Total Building Performance”, where an approved simulation, using acceptable parameters, indicates that the proposed design energy cost does not exceed that of the standard design (see IECC definitions). The design professional must submit documentation in accordance with IECC - 506.5. The corresponding ASHRAE 90.1 provision is Chapter 11, “Energy Cost Budget Method”. The documentation requirements are listed in 11.1.5.
NOTE: OSE cautions the designer to seek concurrence with OSE prior to using, procuring, or otherwise investing in simulation software or services.
 3. Page 2 of the SE-310, submitted separately, signed and dated by the Agency to include the following:
 - a. Final Revised Estimate of Construction Cost with Agency approval.
 - b. Status of all required permits, zoning appeals, BAR approvals, etc. Copies of all permits and approvals are to be submitted with this page.

5.2.11 BIDDING DOCUMENTS

- A. A copy of the final Bidding Documents as printed and issued to prospective bidders, which incorporate the approved resolution of all previous review comments.
- B. The Bidding Documents are identified in Appendix B.

CHAPTER 6

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

(Procurements Greater than \$50,000)

6.1 RELATED STATUTORY AUTHORITY

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

6.2 APPLICABILITY

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

6.3 ADVERTISING PROJECTS FOR BIDDING

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

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

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

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

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

6.5 ADDENDA

- 6.5.1** The Agency must issue an addendum for modifications, corrections, or clarifications to the bid documents including, but not limited to, the following:
 - A.** Providing a list of all firms represented at a mandatory pre-bid conference;
 - B.** Providing responses to questions received from potential bidders during the bidding period;
 - C.** Providing a list all substitutions approved by the Agency or design professional;
 - D.** Providing clarification to items in the bid documents prior to the date for the receipt of bids;
 - E.** A change in the date for the receipt of bids;
 - F.** Rescheduling a bid opening; or
 - G.** Canceling the invitation for bids.

NOTE: Meeting minutes from a Pre-Bid Conference/Site Visit are NOT to be included in an addendum. Only information that changes the contract documents should be included.
- 6.5.2** The Agency must issue all addenda modifying, correcting, or clarifying the bid documents at least 120 hours, exclusive of state holidays, prior to bid opening. If there are intervening holidays, the 120 hour period must be increased by 24 hours for each such holiday.

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

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

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

6.6 BID POSTPONEMENT

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

6.7 BID CANCELLATION

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

6.8 BID OPENINGS

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

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

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

A. TIME FOR CONDUCTING BID OPENING

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

B. BIDS RECEIVED AFTER DEADLINE FOR RECEIPT

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

C. CONDUCTING THE BID OPENING

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

6.8.3 Conclusion of Bid Opening

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

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

6.8.4 After Bid Opening

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

6.9 DETERMINATION OF BIDDERS' RESPONSIVENESS

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

6.9.1 Bid Irregularities that are Cause for Rejection

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

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

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

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

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

6.9.3 Failure to Provide Required Bid Security

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

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

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

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

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

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

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

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

- C. Names of the persons opening bids and the witnesses, each of whom must initial the Bid Tabulation sheets;
 - D. List of all contractors submitting bids;
 - E. Acknowledgment of addenda;
 - F. Inclusion of proper bid security;
 - G. Base Bid amount(s);
 - H. Bid Alternate amounts, if requested; and
 - I. Listing of subcontractors for Base Bid(s) and Alternates, if requested; and
 - J. If the Agency declared any bid to be non-responsive, the reasons for that declaration.
- 6.10.2** The Agency must provide OSE a copy of the Bid Tabulation along with the SE-360, Request for Concurrence in Posting Notice of Intent to Award. [See Section 6.19(B)]
- 6.10.3** The Agency must provide all responsive bidders a copy of the Bid Tabulation at the same time they provide them a copy of the SE-370, Notice of Intent to Award. *See SC Code Ann § 11-35-3020(c)(i).*

6.11 EXTENDING BID ACCEPTANCE PERIOD – SC Code Ann Reg. 19-445.2065(C)

- 6.11.1** If the Agency desires to extend the bid acceptance period beyond the time given in the Bid Form, then it should obtain a written extension of bid prices(s) from all bidders before the expiration of that period.
- 6.11.2** A bidder does not have to agree to hold its bid price beyond the bid acceptance period; however, the Agency should consider for award only the bids of those bidders who provide a written extension of their bids before the expiration of the original bid acceptance period.
- 6.11.3** If the Agency fails to obtain a written extension of at least one bid before the expiration of the acceptance period, it will have to re-bid the project before it can award a contract.

6.12 BID WITHDRAWAL, MODIFICATION, OR CORRECTION

SC Code Ann § 11-35-3030(1)(d) & 11-35-1520(7)

6.12.1 Withdrawal or Modification of Bids Before Time for Opening Bids

- A. At any time before the time of the bid opening, a bidder may modify or withdraw his/her bid.
- B. A bidder's modification to his/her bid must be made on the bid form prior to the time of bid opening.
- C. The Agency may not consider a modification to a bid on the outside of the bid envelope.

6.12.2 Withdrawal or Correction of Bids After Time for Opening Bids – SC Code Ann Reg. 19-445.2085

- A. Except in limited circumstances, Bidders may not withdraw or modify their bids in the period after the time of the bid opening but before the time for bid acceptance.
- B. The Agency should require a bidder requesting permission to withdraw or correct his/her bid during this period to submit the request in writing. All decisions to permit correction or withdrawal of bids must be supported by a written determination of appropriateness made by the State Engineer or, if the project is within Agency certification, the Agency Head.

C. CORRECTION:

- 1. Correction to bids after bid opening may cause bidders and the public to question the integrity of State procurements and may be prejudicial to fair competition. Nonetheless, the Consolidated Procurement Code does permit approval of requests to correct a mistake in bid after bid opening in limited circumstance.
- 2. The following applies to a request to correct a bid after bid opening due to a mistake made:
 - a. Correction is allowable in the unlikely event that the low responsive and responsible bidder requests a downward correction in bid price due to a mistake in bid. The rules that follow do not apply to such a request.
 - b. With the exception of a. above, a mistake in judgment is never correctable.
 - c. A mistake of fact (error in transcription, clerical error, etc.) is correctable under the following limited circumstances:
 - 1) The mistake must be one that will clearly cause the bidder substantial loss (SC Code Ann Reg. 19-445.2085(A)); and

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

D. WITHDRAWAL

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

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

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

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

E. RETENTION OF BID SECURITY

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

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

- 6.13.1** Unless there is a compelling reason to reject one or more bids, the Agency must award to the lowest responsible and responsive bidder.
- 6.13.2** The Agency may cancel the invitations for bids after opening, but prior to award, if the procurement officer determines in writing that:
- A. Inadequate or ambiguous specifications were cited in the invitation;
 - B. Specifications have been revised;
 - C. The supplies or services being procured are no longer required;
 - D. The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
 - E. Bids received indicate that a less expensive article differing from that on which the bids were invited can satisfy the needs of the State;
 - F. All otherwise acceptable bids received are at unreasonable prices;
 - G. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
 - H. For other reasons, cancellation is clearly in the best interest of the State.
- 6.13.3** The Agency must state the reasons for canceling an invitation for bids in its determination.
- 6.13.4** The Agency must post a copy of the determination on the date and at the location given at the bid opening for the posting of the SE-370, Notice of Intent to Award.
- 6.13.5** The Agency must also mail a copy to all bidders, along with their bid security, and to OSE.

6.14 RE-BIDDING PROJECTS

- 6.14.1** If the Agency rejects all bids, it may re-bid the project provided it significantly modifies the scope of the construction documents or delays re-bidding by at least three months. The Agency must advertise the project for re-bid just as it did for bid.
- 6.14.2** When re-bidding a project, the Agency must add the word "RE-BID" above the title 'Invitation for Construction Services' on the SE 310, Invitation for Construction Services. The Agency must include any change in the scope of work in the project description in the Invitation.

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

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

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

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

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

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

6.16.1 Criteria for Determining Responsibility

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

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

6.16.2 Verify Proper Contractor Licensing and License Limitations:

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

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

6.16.3 Uncertainty Concerning a Prospective Contractor's Responsibility

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

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

6.16.4 Action upon Determination of Non-Responsibility

A. WRITTEN DETERMINATION

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

B. AWARD TO NEXT LOWEST BIDDER

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

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

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

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

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

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

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

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

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

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

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

6.19.1 Requirement of Posting

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

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

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

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

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

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

6.21 INSPECTION AND TESTING SERVICES AND BUILDING/CONSTRUCTION PERMIT

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

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

6.22 SUBMITTING THE CONTRACT TO CONTRACTOR FOR EXECUTION

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

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

6.23 REVIEWING CERTIFICATE OF INSURANCE AND PERFORMANCE AND PAYMENT BONDS

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

6.23.1 After receiving the certificates of insurance and performance and payment bonds from the contractor, the Agency should review them to determine that they are authentic and meet the requirements of the Procurement Code and Regulations.

6.23.2 The Agency is responsible to assure that it has the required labor and material payment bond in place before permitting the contractor to start work. *See Sloan Const. Co., Inc., v. Southco Grassing, Inc., 377 S.C. 108, 659 S.E.2d 158 (2008).* Failure to do so could make the Agency liable for the contractor's failure to pay its subcontractors and suppliers.

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

6.24 NOTICE TO PROCEED

6.24.1 After receiving and confirming the validity of the Certificate of Insurance and Performance and Payment Bonds, but not sooner, the Agency may issue the SE-390, Notice to Proceed, to the contractor. The Agency must issue an SE-390, Notice to Proceed, to the contractor on all contract awards whether within or over the Agency construction certification.

6.24.2 The SE-390, Notice to Proceed, should be issued within five days of receipt of an executed contract from the contractor along with a Performance Bond, a Labor and Material Payment Bond, and a Certificate of Insurance, all of which comply with the requirements of the contract documents.

6.24.3 The Agency must include the date of commencement of work in the SE-390, Notice to Proceed. The Agency must use the date of commencement established in the SE-390 for determining the date(s) of Substantial and Final Completion and the application of any Early Completion Award or Liquidated Damages. The Date of Commencement should be set at least 7 days after the date of the Notice to Proceed to allow the Contractor to mobilize its work forces. This time may be waived if approved by the contractor.

6.24.4 The Agency must send a copy of the SE-390, Notice to Proceed, along with copies of the executed contract, performance and payment bonds, and certificate of insurance to the OSE, for information only, on the same day it mails the Notice to the contractor.

6.24.5 These documents may be submitted electronically.

6.25 RETURN OF BID SECURITY AND DISPOSITION OF BIDS

6.25.1 Except for the three lowest responsive and responsible bidders, the Agency should return the bid securities of all other bidders within 10 days after the date of the bid opening. Upon execution of a contract, the Agency should, return the bid securities of the three lowest bidders.

6.25.2 The Agency must retain all bids until it has a fully executed contract. The Agency must retain the bid of the successful bidder in its procurement file.

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

Discussion Items

GENERAL

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

SE-310, INVITATION FOR CONSTRUCTION SERVICES

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

INSTRUCTIONS TO BIDDERS (AIA A701-1997 INSTRUCTIONS TO BIDDERS - SOUTH CAROLINA DIVISION OF PROCUREMENT SERVICES, OFFICE OF STATE ENGINEER VERSION)

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

SE-330, LUMP SUM BID FORM

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

6. Page BF-4

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

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

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

CONCLUSION

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

CHAPTER 7

CONSTRUCTION CONTRACT ADMINISTRATION

DESIGN-BID-BUILD

7.1 RELATED STATUTORY AUTHORITY

- 7.1.1** SC Code § 11-35-1220 permits the Chief Procurement Officer to prescribe forms for requisitioning, ordering and reporting supplies, services and construction.
- 7.1.2** SC Code § 11-35-3030 permits a maximum of 3.5% of progress payments to be retained pending completion of the work.
- 7.1.3** SC Code § 11-35-3040 permits clauses providing for adjustment in prices, time of performance and other appropriate contract provisions.
- 7.1.4** SC Code § 11-35-3060 requires all construction contracts, including contract modifications, to be within the project's scope and budget as approved by the State Fiscal Accountability Authority (the SFAA).
- 7.1.5** SC Code § 29-6-30 requires an agency to pay to a contractor the undisputed amount of any pay request within 21 days of receipt of the pay request. The law further requires that the contractor pay its subcontractors, and each subcontractor shall pay their subcontractors, within 7 days of receipt by the contractor or subcontractor. This law applies to all state contractors, including design professionals.
- 7.1.6** SC Code § 29-6-40 provides grounds on which the agency, contractor, or subcontractor may withhold application and certification for payment.
- 7.1.7** SC Code § 29-6-50 permits a contractor to assess interest in the amount of one percent per month of the unpaid undisputed amount of a periodic or final pay request not paid within 21 days of receipt of the pay request, providing notice is given as required by the law.

7.2 PRE-CONSTRUCTION CONFERENCE

- 7.2.1** The Agency should hold a pre-construction conference for all contracts exceeding \$50,000 in value. Items to consider for discussion during the pre-construction conference are located in Table 7.2-1 at the end of this Chapter.
- 7.2.2** The Agency's project representative and the A/E's project manager should conduct the pre-construction conference. Other attendees should include the agency's construction project manager (if assigned), construction inspectors, the general contractor, and major subcontractors.
- 7.2.3** The Agency must give the OSE project manager a minimum of seven days notice of the date, time, and place of any pre-construction conference. If the OSE project manager believes circumstances warrant his/her attendance, he/she will so notify the Agency. Alternatively, if the Agency desires the OSE project manager's attendance, the Agency should notify him/her.
- 7.2.4** The Agency should provide for the keeping and distribution of the meeting minutes to all attendees. The Agency may assign this duty to the A/E by contract.

7.3 CONSTRUCTION SCHEDULES

- 7.3.1** The Contractor is responsible for providing a construction schedule for the Agency and A/E's information. The contract documents should define the required level of detail. At a minimum, the schedule should:
 - A.** Indicate dates for Commencement, Substantial Completion, and Final Completion;
 - B.** Provide a graphical representation of the major events to occur on the project, including coordination of the project with the work of others, if any;
 - C.** Provide a graphical representation of each phase of construction and occupancy; and
 - D.** Indicate dates that are critical to the project.
- 7.3.2** The Agency should make sure that the contractor updates and maintains the schedule as required by the contract documents.

7.4 SHOP DRAWINGS

The Contractor is responsible for preparation of shop drawings that are required by the technical specifications. The construction contract sets forth the details for shop drawing submittal, review, and approval.

7.5 EVALUATION OF SUBSTITUTIONS

- 7.5.1 The Contractor may submit requests to provide materials and equipment different from that specified in the Contract Documents.
- 7.5.2 The Agency has the sole discretion to accept or reject any of these requests. The construction contract provides details for request submittal, review, and approval.

7.6 INSPECTIONS

- 7.6.1 During the construction period, OSE and any other legally constituted authority has access to the project premises for periodic inspections.
- 7.6.2 The A/E's Basic Services may include site visits and observations of work-in-progress, Substantial Completion inspections, Final Completion inspections and other inspections per the A/E contract. Details of the A/E's observation requirements are set forth in the A/E contract.
- 7.6.3 The Agency must assure that inspections required of the owner by the construction contract are performed and documented.
- 7.6.4 The Agency must procure inspection and material testing services from firms on state contract to provide tests and inspections in accordance with Chapter 1 of each of the applicable International Code Council Series of Codes and with Chapter 17 of the International Building Code using the SE-955, Inspection/Material Testing Order and the SE-955A, Inspection/Material Testing Order Negotiation Worksheet.
- 7.6.5 The Agency must submit the SE-955, SE-955A and the SE-962, Statement of Special Inspections Responsibilities, to the OSE Project Manager prior to construction.
- 7.6.6 Inspection and testing firms shall use the SE-965, Project Inspection/Material Testing Log, the SE-966, Project Inspection/Material Testing Deficiency Log, and the SE-970, Inspection/Material Testing Report, all found in Appendix G of this Manual.

7.7 SUBSTITUTION OF SUBCONTRACTORS

7.7.1 Substitution of Unlisted Subcontractors

- A. A Contractor should not engage the services of a prospective subcontractor against whom the Agency or the General Contractor has made a reasonable and timely objection.
- B. A Contractor may substitute one prospective subcontractor for another, with the approval of the Agency as follows:
 - 1. If the Contractor requests the substitution, the Contractor is responsible for all costs associated with the substitution.
 - 2. If the Agency requests the substitution, then the Agency is responsible for any resulting increased costs to the Contractor.

7.7.2 Substitution of Listed Subcontractors

- A. A Contractor may substitute a listed Subcontractor only under conditions allowed by SC Code § 11-35-3021. In considering a request for substitution, the Agency should consider prior interpretations of this statute by the Procurement Review Panel and the Chief Procurement Officer for Construction.
- B. Panel decisions are located at <http://procurement.sc.gov/PS/legal/PS-legal-panel-orders.phtml>. CPOC decisions are located at <http://procurement.sc.gov/PS/legal/PS-legal-decisions-ose.phtml>. Of particular interest is the Panel's decision in Protest of Pizzagalli Construction Company, Case No. 1991-8 wherein the Panel ruled that substitution under § 11-35-3020(2)(b)(iii) [now § 11-35-3021] is only allowed when the facts giving rise to the request for substitution occur after contract award.
- C. For further discussion see footnote 3 in Protest of Melloul-Blamey Construction SC LTD, Case No. 2008-003 (Before the CPOC). In Melloul-Blamey, the CPOC stated that the circumstances set forth in SC Code § 11-35-3020(2)(b)(iii)(bb) & (cc) [now § 11-35-3021] may be exceptions to the rule announced in Pizzagalli.

7.8 CHANGE ORDERS

7.8.1 General Information

- A. A change order is any written amendment to a construction contract that all parties to the contract agree to.

- B. A change order normally modifies one or more of the following elements of the contract:
 - 1. Scope of Work
 - 2. Contract Sum
 - 3. Contract Time
- C. Under no circumstances may the contractor proceed with the work of a change order until the Agency approves it.
- D. If the amount of the change order exceeds the limit of the Agency's construction change order certification, OSE must authorize the change order before the contractor may perform any work.
- E. The parties shall process change orders using the SE-380, Change Order to Construction Contract.

7.8.2 Change Order for Contracts Within Agency Construction Contract Certification

- A. When the original construction contract is within the Agency's construction contract certification limit (as determined by MMO Auditors), process change orders as follows:
 - 1. If the change order does not cause the total construction contract amount to exceed the Agency's construction contract certification limit, then the Agency may authorize the work. The agency does not need to notify OSE of these change orders.
 - 2. If the change order causes the total construction contract amount to exceed the Agency's construction contract certification limit, then OSE must approve the change order before the Contractor may perform any work. The Agency must submit the change order to OSE, along with copies of the following:
 - a. The approved Form A-1 (if the project is required to be established as a PIP);
 - b. Last detailed cost estimate prepared before bidding;
 - c. The SCBO advertisement; and
 - d. Bidding Documents, including addenda.
 - 3. OSE and the Agency will thereafter administer the construction contract as a contract that originally exceeded the Agency's construction contract certification limit.
- B. Nothing in this provision allows an Agency to issue a change order that will cause a small purchase as defined in Chapter 8 to exceed the limits for the type of procurement method used (i.e. a contract under \$2,500 made without obtaining competitive quotes may not be converted to a purchase in excess of \$2,500).

7.8.3 Change Orders for Contracts Above Agency Construction Contract Certification

- A. When the original construction contract award exceeds the Agency's construction contract certification limit, process change orders as follows:
 - 1. If the Change Order has any item or change in work exceeding the Agency's construction change order certification limit, then OSE must authorize the change order before the contractor can perform any work. The agency must send the change order (both deduct and adds), along with all substantiating data noted in subparagraph B below, to OSE for review and approval.
 - 2. If the change order has all items or changes in work within the Agency's construction change order certification limit, the Agency may authorize the work. The agency must send a copy of the change order, along with all substantiating data noted in subparagraph B below, to OSE for information within 30 days of the Agency's authorization of any item included in the change order.
- B. **SUBSTANTIATING DATA:** The Agency must submit substantiating data containing the following:
 - 1. One copy of the completed change order;
 - 2. One copy of supporting cost and schedule data including the following:
 - a. Sufficient detail to explain the scope of work covered by the change order (attach plans, specifications, details, written description, adjustments in cost with back-up information, and quantities of material and labor as required for explanation);
 - b. Contractor's justification for adjustment in the contract sum including properly itemized and substantiating data with sufficient detail to show the following:
 - (1) That the cost involved is both reasonable and fair to all concerned;
 - (2) That the cost is appropriately related to the quantities of materials and labor involved, and
 - (3) That the amount of the contractor's markup (overhead and profit) is as indicated in the contract.

- c. Justification for increasing the time of the contract using information to verify weather-related or other delays not controlled by the contractor.

7.8.4 Failure to Obtain OSE Review and Authorization

- A. Failure to obtain OSE authorization for a change order, when required by agency certification limits, results in the change order being an unauthorized procurement requiring termination or a justification for ratification.
- B. Failure to submit Agency-approved change orders for OSE information within the time specified in 7.8.3.A.2 could result in the Agency having to have the contractor perform corrective work on the project in an untimely manner to bring the project into compliance with code requirements.

7.8.5 Determining if a Change Order is Within Agency Certification

- A. MMO-Audit and Certification web page contains a link at the bottom of the page to a listing of Agency construction change order certifications. The web page is located at <http://www.mmo.sc.gov/PS/agency/PS-agency-cert-limits.phtm>.
- B. To determine whether the Agency or the OSE can authorize the work:
 - 1. The value of a change order item is the total cost required to complete an individual item of work. For example: installation of a drinking fountain may take mechanical, electrical, plumbing, carpentry, painting, and wall covering installation to complete the individual work item.
 - 2. The value of the individual item determines whether OSE authorization is required.
 - 3. The value determination applies to any change in work whether it deducts or adds to the contract amount.
- C. The Agency may not break down a change order into separate, related items of work to circumvent the requirement for authorization by OSE. For example, an Agency may not break a change order adding a parking lot to a contract down into separate items such as one for grading and one for paving.

7.9 CHANGE ORDERS: DELAYS AND TIME

- 7.9.1 The Agency must promptly evaluate a contractor's claim for time to avoid claims for acceleration and damages.
- 7.9.2 The Agency must document any adjustment in contract time by change order. Except in the case of continuing delay, the Agency must execute the change order within 14 days after the contractor submits written notice of the claim for additional time, provided that:
 - A. Any request for adjustment of time includes written substantiation and justification for the change; and
 - B. The A/E has provided written justification concerning the time claimed.
- 7.9.3 A claim for time should include any associated costs and the effect the delay will have on the progress of the work. Only one claim is necessary when an on-going delay is evident during a project.
- 7.9.4 The Agency should not convert change directives to change orders until time claims and contract values are resolved.
- 7.9.5 The Agency must send a change order for time to OSE for information.

7.10 CHANGE DIRECTIVES

7.10.1 General Information

- A. A change directive allows the Agency to direct the contractor to make urgently needed changes in the scope of the construction contract without completing the change order process described above.
- B. In the event that time is of the essence, the use of a change directive may provide relief for the time that it may take for the Agency and the contractor to reach full agreement on the cost or time impact of a change in scope.
- C. A change directive must be in writing and should suggest the method the Agency proposes for determining any adjustment to the contract sum and time.
- D. The Agency may issue a change directive using AIA Document G714.
- E. An agency may issue change directives as necessary. The Agency's construction change order certification limit does not apply.

- F. The Agency should use a change directive rather than a change order in all cases where there is a lack of total agreement between the Agency and the contractor on the cost and schedule impact of all item(s) contained in a change to the work.
- G. When a change directive provides for an adjustment to the contract sum, the parties must make final adjustment in accordance with the change order provisions of the contract.
- H. Portions of a change directive that are not in dispute may be included in the contractor's applications for payment prior to the change directive being converted to a change order.
- I. The Agency should number change directives sequentially and separately from change orders.

7.10.2 Submittals

- A. If the Agency or A/E estimates that the change directive will exceed the Agency's construction change order certification, the Agency, after signing the directive, must submit it to OSE. The Agency must include attachments and documentation with sufficient detail to provide an explanation of the scope or work that is in the change directive.
- B. The Agency must submit the change directive to OSE at the same time it issues the change directive to the contractor.
- C. OSE will review the change directive for any impact on compliance with building codes and other State standards. OSE will communicate any concerns raised by this review to the Agency.

7.10.3 Converting Change Directive to Change Order

- A. When the Agency and the contractor have negotiated a final agreement on the adjustments to the contract sum and the contract time related to the change directive, they must convert the change directive to a change order.
- B. The parties should reference the change directive in the change order and attach the change directive to the change order.
- C. The Agency must process the change order as set forth in paragraph 7.8.

7.11 RESOLUTION OF CONSTRUCTION CLAIMS AND DISPUTES BETWEEN CONTRACTOR AND AGENCY

7.11.1 Claims Handled by the A/E

- A. As part of its Basic Services, the A/E acts as the initial interpreter of the requirements of the construction documents, providing information to the Agency and the contractor concerning the acceptability of the work.
- B. The party making a claim must submit the claim in writing to the A/E as required by the contract for construction. The party must support their claim with adequate documentation.
- C. The A/E will review claims as required by its contract with the Agency, and either approve or reject claims by providing a written decision, giving reasons for the decision.
- D. The A/E will notify those involved of any recommended changes in the contract sum or contract time.
- E. If the A/E's initial decision is acceptable to the Agency and the contractor, the parties must prepare a change order as outlined in the contract documents. The Agency must process the change order as outlined in paragraph 7.8.
- F. If the A/E's initial decision is not acceptable to the Agency or the contractor, the Agency should first attempt to resolve the claim by mutual agreement. The State Engineer strongly urges that the Agency and the contractor use every available means to resolve all claims through negotiations and informal mediation. OSE Project Managers are available to assist.

7.11.2 Claims Handled by OSE

If the Agency or the contractor makes a claim after the Agency's approval of the contractor's final payment, the claimant must submit the claim directly to the State Engineer.

7.12 CLAIMS BY OTHERS

- 7.12.1 The Contractor is responsible for resolving all claims between its suppliers and subcontractors. If the contractor requests assistance, the Agency should assist the contractor, suppliers, or subcontractors in resolving their disputes.

- 7.12.2** When the Agency becomes aware that the contractor is not paying suppliers or subcontractors, the Agency should discuss this with the contractor and notify the surety company. If requested by the Agency:
- A.** The Contractor should provide justification for not paying the subcontractor or supplier; and
 - B.** The A/E should render an opinion to the Agency as to the Contractor's justification for the lack of payment to a subcontractor or supplier.
- 7.12.3** The Agency should cooperate with the surety in responding to claims of non-payment from subcontractors and suppliers.
- 7.12.4** Pending resolution of claims by others, the Agency should consider withholding appropriate sums from payments to the contractor if such withholding is required to protect the interests of the State. However, the Agency must follow the terms and conditions of the contract in withholding any payments.

7.13 DISPUTES OR UNRESOLVED CLAIMS

- 7.13.1** Only the Agency, the A/E and its direct consultants, and the Contractor and its direct subcontractors are entitled to submit a request for resolution of a contract controversy to the State Engineer.
- 7.13.2** A party submitting a dispute to the State Engineer for resolution must do so in accordance with SC Code Ann. § 11-35-4230. See Chapter 1 of this Manual.

7.14 APPLICATION AND CERTIFICATION FOR PAYMENT

- 7.14.1** The contractor should submit applications for payment to the A/E in the form of AIA Documents G702 and G703. If the Agency is not using an A/E or other outside consultant, the contractor should submit its pay applications directly to the Agency.
- 7.14.2** The A/E will review the contractor's application for payment and accompanying progress schedules and other back-up information. Based on the A/E's on-site observations, the A/E will determine the amounts due the Contractor and submit recommendations for payment in writing to the Agency.
- 7.14.3** After review and certification of the amounts due the Contractor, the A/E will send the applications for payment to the Agency.

7.15 PROGRESS PAYMENTS TO CONTRACTORS

- 7.15.1** When a contractor has performed in accordance with the provisions of its contract, the Agency must pay the contractor the undisputed amount of any pay request within 21 days of the Agency's (or A/E's) receipt of that pay request. The law considers the A/E's receipt of the pay request as the equivalent of the Agency's receipt since the A/E is acting as the Agency's representative.
- 7.15.2** If the Agency delays payment to a Contractor by more than 21 days, the Agency must pay the contractor interest, beginning on the due date, at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due. However, the Agency will owe interest ONLY if the contractor notified the Agency that such interest might be due at the time the contractor requested payment.

7.16 WITHHOLDING PAYMENT TO CONTRACTORS

- 7.16.1** In addition to any retainage stated in the contract for construction, the Agency may withhold additional amounts as required to protect the interests of the State. Reasons for additional withholding are set forth in the contract.
- 7.16.2** When the Agency has determined to its satisfaction that unsatisfactory job progress has caused or will cause the actual contract time to exceed the specified (or adjusted) contract time, and if the contract includes a provision for assessing actual or liquidated damages, payment shall be withheld from the contractor in amounts necessary to cover the anticipated damages.
- A.** Such amounts to cover damages for late completion are in addition to retainage, the balance for incomplete work and any amounts withheld for other reasons stated in the contract.
 - B.** Actual or Liquidated Damages to be assessed a contractor are NOT to be incorporated into a change order, as they are not changing the value of the contract. They are only to be listed as a line item deduction from the amount paid on the pay application.

7.17 RETAINED AMOUNTS OF PROGRESS PAYMENTS (RETAINAGE)

- 7.17.1** In any contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the Agency may not retain more than 3.5% of each progress payment.

7.17.2 Upon final completion of the work, the Agency must include in the final payment to the contractor, retained amounts of progress payments not previously released.

7.18 SUBSTANTIAL COMPLETION

7.18.1 General

- A.** The A/E should declare substantial completion only if construction is sufficiently complete, in accordance with the contract documents, such that the Agency can occupy or utilize the project (or a portion) for the use for which it is intended.
- B.** The work remaining for the contractor to complete after substantial completion should be minor in nature such that it will not disrupt the occupants unduly or prevent them from carrying out their normal functions.
- C.** Examples of such minor work are:
 - 1. Minor paint touch-up,
 - 2. Adjustments to hardware that is in place,
 - 3. Adjustments to windows, and
 - 4. Repair to minor items.
- D.** The Contractor is responsible to correct work that the A/E or Owner rejects for failure to conform to the requirements of the contract documents, whether they discover such non-conforming work before or after Substantial Completion.

7.18.2 Inspections for Substantial Completion

- A.** The Agency shall give OSE a minimum of ten (10) days' notice of the date, time and place of the Substantial Completion inspection so that the OSE Project Manager may attend.
- B.** Where applicable, the following individuals should be present for the inspection, unless the Agency waives their attendance:
 - 1. A/E's Architect of Record;
 - 2. Mechanical Engineer of Record;
 - 3. Electrical Engineer of Record,
 - 4. Other design professionals as applicable;
 - 5. Local Fire Marshal's representatives; and
 - 6. Other authorities having jurisdiction.
- C.** If additional Substantial Completion inspections are required, the Agency may charge the Contractor for all costs of re-inspection. If necessary, the Agency may deduct the costs of re-inspection from payments due the contractor.

7.18.3 Declarations of Substantial Completions

- A.** The A/E may declare Substantial Completion by issuing the SE-550, Certificate of Substantial Completion, signed by the Agency and the A/E.
- B.** The parties should indicate on the certificate the number of days allowed until final completion.
- C.** The Agency must submit a copy of the fully completed SE-550, Certificate of Substantial Completion, to the contractor and OSE.
- D.** Issuance of the SE-550, Certificate of Substantial Completion, terminates the Agency's right to impose Liquidated Damages (if any) and establishes the beginning date for the warranty period.
- E.** The Agency must obtain permanent insurance on the work from the Insurance Reserve Fund as soon as it and the A/E issue a certificate of substantial completion.

7.19 CERTIFICATE OF OCCUPANCY/USE

7.19.1 Requirements for Obtaining a Certificate of Occupancy/Use

- A.** The State Engineer or his designee will issue the SE-585, Certificate of Occupancy/Use, for any building or structure that is constructed or renovated with state funds, or project that is built on state property.
- B.** The Agency must obtain an SE-585, Certificate of Occupancy/Use, for all projects for which OSE requires an SE-580, Building/Construction Permit. Agencies must coordinate with OSE to determine if a Building/Construction Permit and Certificate of Occupancy/Use are required for a specific project.

- C. The Agency may not use any building or project or change an occupancy classification for any building requiring an SE-580, Building/Construction Permit, until the State Engineer has issued the SE-585, Certificate of Occupancy/Use for the building or project.
- D. The State Engineer will issue the SE-585, Certificate of Occupancy/Use, upon completion of the following:
 - 1. The OSE Project Manager receives and accepts all A/E and independent inspector inspection reports;
 - 2. The A/E provides copies of tests to the Agency (and OSE as requested) for the following:
 - a. Fire sprinkler system,
 - b. Mechanical equipment,
 - c. Plumbing (including domestic water sanitary testing)
 - d. Fire Alarm,
 - e. Electrical,
 - f. Emergency power,
 - g. Structural,
 - h. Soil, and
 - i. Other testing that may be listed in the contract documents;
 - 3. The A/E and Agency have received all items that are required for Substantial Completion (see paragraph 7.18) per the contract documents; and
 - 4. The A/E inspects the building or structure and determines the construction to be in accordance with the Contract Documents.
- E. The State Engineer or his designee may, in his/her sole discretion, issue a Temporary Certificate of Occupancy/Use before the entire work is complete upon receipt of:
 - 1. Certification by the Agency, A/E, and contractor that such portion of the work is safe for occupancy, and
 - 2. Agreement by the project manager, after a review of the project.

7.19.2 Revocation of a Certificate of Occupancy

The State Engineer has the authority to suspend or revoke the SE-585, Certificate of Occupancy/Use, if:

- A. The certificate is issued in error;
- B. The certificate is issued on the basis of incorrect information supplied; or
- C. It is determined that the building or structure (or a portion thereof) is in violation of any part of the building codes.

7.20 RECORD DOCUMENTS

7.20.1 At the end of the project, the Agency should receive from the A/E one set of record documents (including reproducible plans that reflect all changes that are on the contractor-provided “red line” drawings and specifications) and warranty/guaranty information.

7.20.2 The Agency should refer to the A/E’s contract and the contract for construction for details on these drawings.

7.21 FINAL COMPLETION

7.21.1 When the contractor believes his work is completed, he shall submit the SE-560, Certificate of Final Completion, to the A/E and request a final inspection. Upon receipt of the SE-560, the A/E will:

- A. Survey the work to verify that the project is ready for final inspection;
- B. If the he/she disagrees with the contractor’s assessment of the status of the project, notify the contractor accordingly;
- C. If he/she agrees with the contractor’s assessment of the status of the project, schedule a final completion inspection, with the Agency and contractor.

7.21.2 The A/E will perform the final completion inspection, along with those attending the inspection and, if the results are acceptable, the A/E and Agency will sign the SE-560 and declare that the project is finally complete.

7.22 CONTRACT CLOSURE AND FINAL PAYMENT

7.22.1 Closure of the construction contract, including final payment to the Contractor, requires the following:

- A.** A declaration of Final Completion issued by the A/E and accepted by the Agency;
- B.** The Contractor's submission, to the A/E, of the following:
 - 1.** An affidavit, in the form of the AIA G706, that wages, bills for materials and equipment, and other indebtedness connected with the work have been paid.
 - 2.** A certificate in the form of AIA G715 issued by an authorized representative of the contractor's insurance company certifying completed project insurance coverage as required by the contract documents;
 - 3.** A statement that the Contractor knows of no reason that the completed project insurance will not be renewable to cover the period required by the Contract Documents;
 - 4.** Consent of surety, if any, to final payment, in the form of AIA G707;
 - 5.** Other information required by the Agency establishing the Contractor's payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims and security interests arising out of the contract, all in the forms as designated by the Agency;
 - 6.** Inspection reports that may not be a part of the record documents;
 - 7.** Redline drawings showing the as-built conditions;
 - 8.** Warranties;
 - 9.** Operation and maintenance manuals; and
 - 10.** A final payment application.

7.22.2 Upon final completion and the Agency's receipt and approval of the contractor's final payment application, the Agency must pay the contractor all funds remaining due, including all amounts retained from progress payments.

7.23 ONE-YEAR CORRECTIVE WORK PERIOD

7.23.1 The contractor is contractually bound to correct all deficiencies noted within one year after the date of substantial completion.

7.23.2 Based on the requirements of the agreement between the Agency and the A/E, the Agency should have the A/E inspect the project ten months after substantial completion for any deficiencies that may have developed during the one year period after substantial completion.

7.23.3 Upon completion of the inspection, the A/E should issue a written report to the Agency, OSE, and the contractor indicating deficiencies the contractor must correct.

7.23.4 Upon receipt of the report, the contractor is obligated to correct the noted deficiencies.

7.23.5 Failure by the Agency to perform this inspection, prior to the end of the one year period after substantial completion, could void any recourse for correction of latent deficiencies by the contractor or any enforcement under the Performance Bond.

7.24 PROJECT CLOSE-OUT

7.24.1 When an Agency determines that a PIP project is complete, the Agency shall submit a Form A-1 to the Capital Budgeting Unit for approval to close out the project.

7.24.2 When an agency determines that a Non-PIP project is complete, the Agency shall submit written notification to OSE to close out the project.

TABLE 7.2-1. PRE-CONSTRUCTION CONFERENCE DISCUSSION ITEMS

ITEM NO.	PRE-CONSTRUCTION CONFERENCE ITEM	USER COMMENTS
1.	Introduction of all team members and their responsibilities;	_____
2.	Project organizational structure and chain of command;	_____
3.	Duties and expectations of the Agency, A/E, and contractor,	_____
4.	Contract disputes, mediation, partnering, resolution;	_____
5.	Project scope of work;	_____
6.	Schedule of values, schedule of completion;	_____
7.	Schedule of progress meetings;	_____
8.	Project work schedule, normal working hours, normal work week;	_____
9.	Required notice for scheduling overtime, outages, interruptions;	_____
10.	Safety issues - general and special;	_____
11.	Temporary and permanent utilities;	_____
12.	Security, keys, fencing, site access, limited access to certain areas;	_____
13.	Project sign;	_____
14.	Designated parking areas, delivery areas;	_____
15.	Designated storage areas, bonded storage, security;	_____
16.	Designated toilets, break areas, vending areas, smoking areas;	_____
17.	Daily clean-up, trash removal, dumpster, trash areas;	_____
18.	Submittals, shop drawings, testing, reports, approval process;	_____
19.	Required permits, licenses, local inspections, testing;	_____
20.	Demolition items to be salvaged for agency, if any, notification, storage area;	_____
21.	Requirement to locate utilities prior to excavation;	_____
22.	Contractor's bonds (as required by SC Law), names of surety companies, required notification for claims;	_____
23.	Builders' Risk Insurance and contractor's insurance;	_____

ITEM NO.	PRE-CONSTRUCTION CONFERENCE ITEM	USER COMMENTS
24.	Agency furnished equipment, rough-in, trim;	_____
25.	Application for Payment in the form of AIA G702, payment dates, payment for stored materials;	_____
26.	Prompt payments to contractors in 21 days, subcontractors 7 days thereafter;	_____
27.	Timely notification by the Contractor in writing to the A/E of any alleged agency-caused delay and the estimated cost of the delay;	_____
28.	Additional weather related time extensions monthly;	_____
29.	Change orders, change directives, clarifications;	_____
30.	Required inspections by A/E, agency, and inspectors (where applicable),	_____
31.	Use of OSE Inspection forms and Inspection report routing – direct distribution rather than by link;	_____
32.	Material and soil testing requirements;	_____
33.	Review requirements for substantial completion	_____
34.	Substantial Completion inspection, and notification procedure	_____
35.	Substantial Completion certification by the A/E;	_____
36.	Occupancy, Partial occupancy;	_____
37.	Assessment of liquidated damages;	_____
38.	Required Operation and Maintenance Manuals (provide prior to Final Completion);	_____
39.	Instruction and training of maintenance personnel (provide prior to move-in/occupancy)	_____
40.	Warranties, manufacturer start-up, guarantees (provide prior to Final Completion)	_____
41.	Record drawings, as built drawings;	_____
42.	Final Completion inspection, punch list;	_____
43.	Retainage withheld, consent of surety company before release of retainage;	_____
44.	One-year inspection (A/E to inspect the facility 10 months after substantial Completion).	_____
45.	Contractor is responsible for making corrections to items found during the one-year inspection.	_____

CHAPTER 8

MISCELLANEOUS PROCUREMENTS

8.1 RELATED STATUTORY AUTHORITY

- 8.1.1 SC Code § 11-35-540 permits the SFAA to promulgate regulations, to approve agencies internal operational procedures for procurement, and to audit and monitor agencies procurement procedures.
- 8.1.2 SC Code § 11-35-1550 permits agencies to procure small purchases in accordance with regulations established by the SFAA.
- 8.1.3 SC Code § 11-35-1560 permits the Chief Procurement Officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer, to authorize in writing a sole source procurement.
- 8.1.4 SC Code § 11-35-1570 permits the Chief Procurement Officer, the head of a purchasing agency, or a designee of either officer to authorize emergency procurements.
- 8.1.5 SC Code § 11-35-2440 requires that all sole source procurements and emergency procurements be reported to the appropriate Chief Procurement Officer.
- 8.1.6 SC Code § 11-35-3030 requires governmental bodies to obtain labor and material payment bonds on any contract to improve real property if the contract is valued in excess of \$50,000.
- 8.1.7 SC Regulation 19-445.2105 sets forth standards for sole source procurements.
- 8.1.8 SC Regulation 19-445.2110 sets forth standards for emergency procurements.

8.2 TYPES OF MISCELLANEOUS PROCUREMENTS

- 8.2.1 Small Purchases
- 8.2.2 Sole Source Procurements
- 8.2.3 Emergency Procurements

8.3 SMALL PURCHASES

- 8.3.1 **Protest Rights:** Protest rights do not apply to contracts awarded under the Small Purchase procedures set forth in this section.

8.3.2 Limits for Small Purchases:

- A. Small purchases are limited to an amount of \$50,000 or less.
- B. Each agency may have additional internal procedures that further limit the authority to make small purchases. The Agency's internal procedures should be verified with their procurement officer.
- C. Sales tax is not included in the purchase price when determining the method of procurement.

Note: For approved Higher Education Institutions, S.C. Code Ann. § 11-35-1550 was amended effective August 5, 2011 to raise the small purchase limit for procurements without receiving quotes to \$10,000. All Universities are approved by the statute to use this higher limit. Each Technical College must receive approval from the State Board for Technical and Comprehensive Education to use the higher limit. No other small purchase limits were changed.

- 8.3.3 **Competition Requirements:** The specific requirements on the agency to obtain competition for small purchases depend on the amount of the awarded contract or purchase order.

A. PURCHASES OF \$2,500 OR LESS:

- 1. Agency may make small purchases with a total cost of \$2,500 or less without getting competitive quotes. For approved Higher Education Institutions, this limit is \$10,000.
- 2. The Agency should distribute these purchases equitably among qualified suppliers. Unless it is impractical, the agency should solicit bids from other suppliers before giving the previous supplier a repeat order.
- 3. The Agency should make the purchase on a purchase requisition form provided by the Agency's procurement officer.
- 4. The procurement officer or his designee must annotate the purchase requisition with the words "Price is fair and reasonable" and sign it.

5. The Agency is only required to verify the reasonableness of the price when the procurement officer of the agency suspects that the price may not be reasonable, e.g., by comparison to the previous price paid or personal knowledge of the item involved.
- B. PURCHASES OVER \$2,500 BUT LESS THAN OR EQUAL TO \$10,000:**
1. The Agency must solicit written quotes from a minimum of three qualified sources of supply. The Agency must award to the lowest responsive and responsible source. (See Chapter 6 for more information on the evaluation of a bidder's responsiveness and responsibility.) This provision does not apply to approved Higher Education Institutions.
 2. The Agency should make the purchase on a purchase requisition form provided by the agency's procurement officer, with the following attached in the agency file:
 - a. Documentation of the quotes; and
 - b. A statement documenting that the procurement is to the advantage of the State (price and other factors considered), including the administrative cost of the purchase.
- C. PURCHASES OVER \$10,000 BUT LESS THAN OR EQUAL TO \$50,000:**
1. The agency must advertise for written bids at least once in SCBO under the "Minor Construction" section.
 2. The Agency must award to the lowest responsive and responsible source. (See Chapter 6 for more information on the evaluation of a bidder's responsiveness and responsibility.)
 3. The Agency should make the purchase on a purchase requisition form provided by the agency's procurement officer, with the following attached in the agency file:
 - a. A copy of the written solicitation and written bids; and
 - b. A statement documenting that the procurement is to the advantage of the State (price and other factors considered), including the administrative cost of the purchase.
- 8.3.4** Agencies should not use the Small Purchase procedures when the anticipated award price is greater than approximately \$45,000. In the event the lowest responsive and responsible bid is greater than the \$50,000 small purchase limit, the agency will be required to cancel the solicitation and re-bid using the competitive sealed bidding process described in Chapter 6.

8.4 SOLE SOURCE PROCUREMENTS

8.4.1 Agency's Authorization of Sole Source Procurements:

- A. The Agency must determine for itself that there is only one source for the required service or construction.
- B. The chief procurement officer, the head of the Agency or his/her designee above the level of the agency's procurement officer, must authorize the sole source procurement.
- C. The Agency must memorialize its determination that there is only one source for the service or construction and its authorization for the purchase in writing.
- D. The Agency must place a copy of its written determination in its procurement file.
- E. The Agency's determination is subject to protest.

8.4.2 OSE Code Review:

OSE must review, for building code compliance, the design and construction of Sole Source Procurements that exceed an Agency's construction procurement certification.

8.4.3 Basis and Procedure for Sole Source Procurements:

See SC Regulations 19-445.2105 for the basis of making a sole source procurement and the requirements for the determination that a sole source procurement is necessary.

8.4.4 Bid Security, Bonds and Insurance for Sole Source Procurements:

- A. The Agency need not require bid security for a sole source procurement; however, the agency must require the contractor to provide a performance bond and labor and material payment bond when the sole source procurement is for construction greater than \$50,000.
- B. The agency may waive bonding requirements for construction contracts under \$50,000, if they have protected the interests of the State.
- C. The contractor must provide the standard contractor's insurance policies.
- D. See Chapter 6 for detailed information concerning bond and insurance requirements.

8.4.5 Change Orders or Amendments to Sole Source Procurements:

- A. The Agency may only authorize change orders to meet a change in scope, time, or cost directly related to the sole source procurement.
- B. The Agency may not use change orders to add additional procurements that the Agency can obtain from other qualified sources.
- C. If the Agency does issue change orders, it must submit them to OSE marked “Sole Source Procurement – For Information Purposes Only.”
- D. OSE will neither acknowledge receipt of this documentation nor approve the changes.

8.4.6 Reporting Sole Source Procurements:

- A. The Agency must submit a quarterly report of all sole source procurements to the Materials Management Office (MMO) as directed by the Audit and Certification Group.
- B. The Agency must also submit construction-related sole source procurements to OSE on the OSE/MMO #102, within 10 days of contract award. The Agency must submit the contract documents to OSE marked “Sole Source Procurement – For Information Purposes Only.”
- C. OSE will neither acknowledge receipt of this documentation nor approve the purchase.

8.5 EMERGENCY PROCUREMENTS**8.5.1 Agency Authorization of Emergency Procurements**

- A. The Agency must determine for itself the need for an emergency procurement. Only the chief procurement officer, the head of the Agency or their designee may make or authorize an emergency procurement. The Agency may only make an emergency procurement when there is an immediate threat to public health, welfare, critical economy and efficiency, or safety.
- B. The Agency must document, in writing, the emergency condition and the circumstances or events that resulted in the emergency condition.
- C. The Agency’s determination to proceed with an emergency procurement is subject to protest.

8.5.2 OSE Code Review

OSE must review, for building code compliance, the design and construction of Emergency Procurements that exceed the Agency’s construction procurement certification. OSE will expedite this review.

8.5.3 Permanent Improvement Project Approval

If the emergency procurement results in a project meeting the definition of a Permanent Improvement Project, the Agency must submit the project to the SFAA immediately for approval.

8.5.4 Basis and Procedure for Emergency Procurement

See S.C. Regulation 19-445.2110 for the requirements for an emergency purchase and for the determination that an emergency purchase is necessary. See Sloan v. DOT, Opinion No. 26534 (S.C. 2008) for the definition of an emergency as set forth by the South Carolina Supreme Court. You may find the Supreme Court’s decision at: [http://procurement.sc.gov/webfiles/MMO_Legal/Resources/Sloan v. DOT%28II%29.pdf](http://procurement.sc.gov/webfiles/MMO_Legal/Resources/Sloan_v_DOT%28II%29.pdf)

8.5.5 Emergency When Competitive Sealed Bidding is Unsuccessful

- A. Whenever competitive sealed bidding is unsuccessful and the Agency determines that an emergency exists because time or other circumstances will not permit the delay required to re-solicit competitive sealed bids without a significant negative impact on the ability of the agency to fulfill its mission, then the Agency may negotiate a contract as follows:
 - 1. The Agency must notify each responsible bidder who submitted a bid under the original solicitation in writing of the agency’s determination and give each such bidder a reasonable opportunity to negotiate.
 - 2. The Agency must conduct such negotiations independently and may not share any information regarding the preliminary or best and final offers of any bidder with other bidders.
 - 3. The Agency may award a contract if:
 - a. The final negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation; and
 - b. The final negotiated price is the lowest offered by any responsible and responsive offeror.

- B. An Agency considering negotiation of a construction contract under a declared Emergency should contact OSE for guidance.

8.5.6 Bid Security, Bonds and Insurance

- A. The Agency must require the contractor provide a performance bond and labor and material payment bond when the emergency procurement is for construction of \$50,000 or more.
- B. The Agency may waive bonding requirements for construction under \$50,000, if they have protected the interests of the State.
- C. Insurance provided by the contractor or A/E is required on all Emergency Procurements.
- D. See Chapter 6 for additional information concerning bond and insurance requirements.

8.5.7 Change Orders or Amendments to Emergency Procurments

- A. The Agency may only issue a change order to meet a change in scope, time, or cost specifically related to the conditions or circumstances that justified the emergency procurement.
- B. The Agency may not issue change orders to add additional procurements that are not necessary to respond to the emergency.
- C. The Agency must submit any change order to OSE marked "Emergency Procurement - For Information Purposes Only."
- D. OSE will neither acknowledge receipt of this documentation nor approve the changes.

8.5.8 Reporting Emergency Procurements

- A. The Agency must submit a quarterly report of all emergency procurements to the Materials Management Office (MMO) as directed by the Audit and Certification Group.
- B. The Agency must submit construction-related emergency procurements to OSE on the OSE/MMO #103 within 10 days of contract award.
- C. OSE will neither acknowledge receipt of this documentation nor approve the purchase.

CHAPTER 9

INDEFINITE DELIVERY CONTRACTS

9.1 GENERAL

9.1.1 Related Statutory Authority

- A. SC Code § 11-35-3310 allows agencies to award indefinite delivery contracts for architectural-engineering and land surveying services pursuant to § 11-35-3220 and construction services pursuant to § 11-35-3015(2)(b).
- B. SC Code § 11-35-830 creates within the State Fiscal Accountability Authority the State Engineer's Office and requires that all procurements of construction, architectural and engineering, construction management, and land surveying services and any pre-procurement and post-procurement activities in this area be conducted in accordance with the Manual for Planning and Execution of State Permanent Improvements.
- C. SC Code § 11-35-3240 provides that a Manual for Planning and Execution of State Permanent Improvements may be published by the State Fiscal Accountability Authority or its designee.
- D. SC Code Regulation 19-445.2145(H) requires the State Engineer's Office to establish working procedures for indefinite delivery construction contracts and to include those procedures in the Manual for Planning and Execution of State Permanent Improvements.

9.1.2 Definitions

- A. The term "Indefinite Delivery Contract" (IDC) means a contract that does not procure or specify a defined quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of delivery orders for the performance of tasks during the period of the contract.
- B. A Professional Services Indefinite Delivery Contract (IDC) is a contract whereby the professional agrees to provide the Agency professional services on an "as-needed" basis during the term of the contract. Agencies procure Professional IDC's in the same manner as any professional service contract as set forth in Chapter 4 of this Manual. Part 2 below gives instructions for the use of indefinite delivery contracting for professional services.
- C. A Construction Services Indefinite Delivery Contract (IDC) is a contract whereby the contractor agrees to provide the Agency construction services on an "as-needed" basis during the term of the contract. Agencies procure Construction IDC's in the manner set forth in Section 9.3 below.
- D. A Delivery Order is an order issued by an Agency for either a professional or a contractor to perform work (tasks) under an IDC.

9.1.3 General Requirements for Solicitation of an IDC

- A. The solicitation for an IDC contract shall include the following:
 - 1. Period of the contract (an IDC may not exceed two years);
 - 2. Maximum dollar value of the services to be procured under the contract;
 - 3. Maximum dollar value of the services to be procured under a single delivery order;
 - 4. Statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer.
 - 5. Means of determining a price for each delivery order.
 - 6. Procedures the Agency will use in issuing orders for items of work, including the ordering media.
 - 7. Any geographic limitations to the contract, e.g., a specific campus of the Agency.
 - 8. Any required contractor response times.
- B. Each delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order so the full price for the performance of the work can be established when the order is placed. Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract. Orders must not be artificially divided.
- C. At any given time, a governmental body may enter into one or more IDC's in accordance with the provisions contained in this Chapter for each of the following categories: architectural services, landscape architectural services, professional engineering services, land surveying services, interior design services, construction management agent services and each licensing classification and subclassification for

construction services. Licensing classification and subclassification shall have the meaning provided by Chapter 11 of Title 40 SC Law.

9.2 PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACTING

9.2.1 The Professional Services Indefinite Delivery Contract

A. PROCURING PROFESSIONAL SERVICES INDEFINITE DELIVERY CONTRACTS

1. The agency procures Architect/Engineer, Land Surveyor, and Construction Management Agent service (hereinafter “professional service”) IDC’s in the same manner as all professional services described in Chapter 4, except using the 600 series forms. Unless expressly modified by this section, the Agency must follow the procedures set forth in Chapter 4 for soliciting professional services, selecting professionals, submitting documentation to OSE, obtaining OSE approvals, and contracting with professionals.
2. Agencies need to obtain an IDC project number from OSE prior to soliciting for resumes. To obtain an IDC number, contact OSE at (803) 737-0634. OSE will assign an IDC project number with the prefix “D” following the Agency number, e.g., J16-D027.
3. If the Agency intends to award more than one contract for a specific category of service, the Agency must place notification in the advertisement for professional services that it will award multiple contracts and the maximum number of contracts it intends to award. The number of awards an Agency makes shall not exceed the number specified in the advertisement.
4. With OSE approval of an Agency’s written justification of need, an Agency may, by notification in the advertisement for professional services, award IDC contracts to more than five persons or firms under the same advertisement and interview process. The Agency’s justification to OSE must set forth:
 - a. why the Agency needs to award more than five (5) contracts;
 - b. the means by which the Agency will make awards of delivery orders to the multiple contractors in order to provide the best quality and value to the state, and
 - c. the number of awards necessary to meet the Agency’s needs.
5. In the event the Agency makes multiple awards, the agency must, in coordination with OSE, assign an alpha/numeric identification to the project number so that each contract will have a unique contract number.

B. CONTRACT FORM

The Agency shall use the SE-640, Professional Services Indefinite Delivery Contract, for its large and small Professional Services IDC’s. The contract must be completed in a manner consistent with the requirements outlined herein.

C. PROFESSIONAL SERVICES IDC LIMITATIONS

Note: S.C. Code Ann. § 11-35-3310(2) was amended effective August 5, 2011 to raise the Indefinite Delivery Contract limits for approved Higher Education Institutions. All Universities are approved by the statute to use these higher limits. Each Technical College must receive approval from the State Board for Technical and Comprehensive Education to use the higher IDC Limits.

1. The sum of all Delivery Orders issued during the two year term of the contract under a small professional service IDC may not exceed \$25,000. For an approved Higher Education Institution, this limit is \$50,000. These maximum amounts do not include payments for reimbursable expenses.
2. If the agency has or has had other small contracts with a particular professional, the agency may not be able to contract with that professional using a small IDC. State Law prohibits entering into a small professional services contract if the sum of all small contract fees, excluding reimbursable expenses, paid to the professional in the 24 months preceding contract negotiations exceeds \$75,000 for small contracts. *See SC Code Ann § 11-35-3230(2)*. For an approved Higher Education Institution, this limit is \$150,000.
3. The sum of all Delivery Orders issued during the two year term of the contract under a large professional services IDC may not exceed \$300,000. For an approved Higher Education Institution, this limit is \$500,000. Individual Delivery Orders under these contracts may not exceed \$100,000. . For an approved Higher Education Institution, this limit is \$200,000.

4. Agencies may not use multiple IDC's or Delivery Orders to receive professional services normally procured as full scope professional services contract, unless both:
 - a. The agency has staff qualified to provide project management; and
 - b. The cumulative professional fees for the project do not exceed \$100,000 for Large IDC's and \$25,000 for Small IDC's. For an approved Higher Education Institution, this limit is \$200,000. And \$50,000, respectively.
5. The agency may not amend a contract to extend its termination date beyond 2 years from the date of execution.

D. QUARTERLY REPORTS REQUIRED

1. The Agency must submit to OSE quarterly reports on IDC contracts. Each report must contain the following:
 - a. IDC project number;
 - b. Delivery Order number for each Delivery Order issued under the IDC (Note: this cannot be the IDC number);
 - c. Name and brief description of the work the professional performed and/or will perform;
 - d. If Agency is paying the professional fees out of a PIP, the PIP project number from which fees are paid;
 - e. If Agency is not paying the professional fees out of a PIP, identify source of funds;
 - f. Total fees paid the professional for the Delivery Order.
2. If any IDC contracts were closed during the quarter being reported, the Agency should indicate this in the Quarterly Report.
3. If the agency submits a report that fails to include any of the required information, OSE will reject the report and return it to the agency for resubmission.

9.2.2 Delivery Orders Assigned to the Professional Services IDC

- A. Unless revoked by OSE, each Agency is authorized to issue Delivery Orders for professional services without first obtaining OSE approval.
- B. All Professional Services Delivery Orders must be awarded based on qualifications and NOT on price.
- C. DELIVER ORDER FORM: The Agency shall use the SE-635, Professional Services IDC Delivery Order – Small Contract, with small professional services IDC's and the SE-645, Professional Services IDC Delivery Order – Large Contract, with all other IDC's and include the following:
 1. Defined scope of work;
 2. Description of the services and deliverables the professional will provide;
 3. A fee schedule for services the professional will provide; and
 4. Description of the timeframe for completion of the work.
- D. PAYMENT: The Delivery Order may provide for either a lump sum payment to the professional or payment on an hourly basis with a "Not-to-Exceed" amount.
- E. AMENDMENTS TO PROFESSIONAL SERVICES DELIVERY ORDERS
 1. The parties may amend a Delivery Order provided the amendment does not cause the value of the Delivery Order or the IDC to exceed the statutory limits outlined in subsection 9.2.1C.
 2. Either the agency or the professional may initiate a request for an amendment to the Delivery Order using the SE-638, Professional Services IDC Delivery Order Modification – Small Contract, or the SE-648, Professional Services IDC Delivery Order Modification – Large Contract. In either event, the A/E should prepare a cost and technical proposal for the amendment and submit it to the agency for approval. The cost proposal must be based on the fee schedule of the Delivery Order and the estimated labor/hour breakdown for anticipated services under the amendment.
- F. PROFESSIONAL SERVICES DELIVERY ORDER LIMITATIONS
 1. The maximum amount the Agency may expend under a single large professional services IDC for work on an individual professional services project may not exceed \$100,000. For an approved Higher Education Institution, this limit is \$200,000. This also means that no Delivery Order may exceed \$100,000 or for an approved Higher Education Institution \$200,000.

2. The Agency shall not issue multiple delivery orders to a single Indefinite Delivery professional for work on an individual professional services project.
 - a. An individual professional services project, as used in this chapter, is an individual project as used in SC Code 11-35-3310(1)(b) and includes all professional services necessary for or related to an individual construction project.
 - b. An individual construction project is as defined in Section 9.3 below.
 3. The maximum amount the Agency may expend under a single small professional IDC for work on an individual professional service project may not exceed \$25,000. For an approved Higher Education Institution, this limit is \$50,000.
 4. Because of the coordination and accompanying liability and risk management issues attendant to contracting with multiple designers to accomplish a project design, the Agency should not use multiple professional IDC's for work on an individual professional services project.
- G. COMPLETION OF THE DELIVERY ORDER WORK AFTER THE IDC TERMINATION DATE**
1. Work on individual projects started within the two-year IDC contract period may continue past the time limit to bring the work to an expeditious completion.
 2. In such event, the agency must notify the OSE in writing, in advance, of the need to start a project within the two-year period that it expects to continue past the time limit. Without such notification, OSE will automatically close out the IDC at the end of the two year contract period.
- H. GUARANTEED MINIMUM AMOUNT OF WORK**
1. An agency must meet its obligations to provide the minimum amount of work guaranteed in each contract.
 2. If an agency has awarded multiple contracts for the same contractor's license category or subcategory, it must meet its obligations to each contractor to provide the minimum amount of work guaranteed in each contract.

9.3 CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACTING

9.3.1 The Construction Services Indefinite Delivery Contract

A. PROCURING CONSTRUCTION SERVICES INDEFINITE DELIVERY CONTRACTS

1. Agencies need to obtain an IDC project number from OSE prior to soliciting bids. To obtain an IDC project number, contact OSE at (803) 737-0634. OSE will assign an IDC number with the prefix "D" following the Agency number, e.g., J16-D027.
2. The Office of State Engineer (OSE) must authorize award of all Construction Services Indefinite Delivery Contracts regardless of the agency's construction contract certification.
3. If the Agency intends to award more than one contract for a specific category of construction, the Agency must place notification in the advertisement for construction services that it will award multiple contracts and the maximum number of contracts it intends to award. The number of awards an Agency makes shall not exceed the number specified in the advertisement.
4. With OSE approval of an Agency's written justification of need, an Agency may award IDC contracts to more than five contractors under the same invitation for bid. The Agency's justification must set forth:
 - a. why the Agency needs to award more than five contracts;
 - b. the means by which the Agency will make awards of delivery orders to the multiple contractors in order to provide the best quality and value to the state, and
 - c. the minimum number of awards necessary to meet the Agency's needs.
5. In the event the Agency makes multiple awards, the agency must, in coordination with OSE, assign an alpha-numeric identification to the project number so that each contract will have a unique contract number.

B. CONTRACT FORM

The Agency shall use the SE-680, Construction Services Indefinite Delivery Contract along with the SE-685, General Conditions to Construction Services Indefinite Delivery Contract for its Construction Services IDC's. The contract must be completed in a manner consistent with the requirements outlined herein.

C. BUILDING CODE COMPLIANCE.

1. Unless OSE delegates its authority as the building official to the Agency or the work is within the Agency's construction contract procurement certification, all work to be performed under a delivery order must be reviewed and approved by OSE for compliance with applicable building codes before the delivery order is issued. Applicable codes are set forth in Chapter 5.1.
2. If OSE review and approval is required, the Agency will send the OSE-assigned project manager a copy of whatever documents are being sent to the IDC contractor(s) for pricing.
3. The OSE project manager will review the documents and email the Agency their comments and/or approval of the project. The Agency shall include this approval email in the project file for the auditors.
4. The Agency will then send OSE a copy of the Delivery Order issued for the project reviewed by OSE.

D. CONSTRUCTION SERVICES IDC LIMITATIONS

Note: S.C. Code Ann. § 11-35-3310(2) was amended effective August 5, 2011 to raise the Indefinite Delivery Contract limits for approved Higher Education Institutions. All Universities are approved by the statute to use these higher limits. Each Technical College must receive approval from the State Board for Technical and Comprehensive Education to use the higher IDC Limits.

1. The sum of all Delivery Orders issued under a single IDC during the two-year term of the contract may not exceed \$750,000. For an approved Higher Education Institution, this limit is \$1 million.
2. The maximum amount the Agency may expend under a single construction IDC for work on an individual construction project may not exceed \$150,000. This means that no Delivery Order including the value of all amendments may exceed \$150,000. For an approved Higher Education Institution, this limit is \$250,000.
3. Agencies may not use multiple IDC's or Delivery Orders to a single Indefinite Delivery contractor for work on an individual construction project, unless:
 - a. The agency has staff qualified to provide project management; and
 - b. The total cost of an individual construction project performed using multiple IDC contractors does not exceed \$150,000. For an approved Higher Education Institution, this limit is \$250,000. Pursuant to SC Code §11-35-3010, the State Engineer's Office hereby disapproves of any individual construction project delivered through Indefinite Delivery Contracting where the cost estimate for the project exceeds these amounts. The Agency may not divide an individual construction project into multiple projects to avoid this limitation
 - c. An individual construction project as used in this chapter is an individual project as used in SC Code 11-35-3310(1) (a) and includes all related construction work on a single project.
4. The agency may not amend a contract to extend its termination date beyond 2 years from the date of execution.
5. Before the Agency can initiate an individual project using Indefinite Delivery Contractors estimated to cost more than the lower limits established for a Permanent Improvement Project in the Manual for Planning and Execution of State Permanent Improvements, Part I, the Agency must submit the project to the Joint Bond Review Committee and State Fiscal Accountability Authority for approval.

E. QUARTERLY REPORTS REQUIRED

1. The Agency must submit to OSE quarterly reports on IDC contracts. Each report must contain the following:
 - a. IDC project number, e.g. J16-D027;
 - b. Delivery Order number for each Delivery Order issued under the IDC (Note: this cannot be the IDC number);
 - c. Name and brief description of work for each Delivery Order;
 - d. Date of OSE Building Code approval (if required) for each Delivery Order;
 - e. Date of Flood Hazard Area Permit (if required) for each Delivery Order;
 - f. If Agency is paying delivery order fees out of a PIP, the PIP project number from which fees are paid;
 - g. If Agency is not paying the delivery order fees out of a PIP, identify source of funds;
 - h. Total fees paid per Delivery Order.

2. If any IDC contracts were closed during the quarter being reported, the Agency should indicate this in the Quarterly Report.
3. If the agency submits a report that fails to include any of the required information, OSE will reject the report and return it to the agency for resubmission.

9.3.2 Bid and Award of Construction IDC

A. **METHOD OF AWARD:** The bidding documents must accurately describe the method the Agency plans to use to arrive at a Base Bid. The Agency may use one of three methods for bidding IDC's:

1. Low Bid of a Representative Project

Under this method, the Agency uses an actual project (representative project) to solicit bids - not a hypothetical project nor a previously completed project, but one that may be constructed by the low bidder.

- a. The Agency awards an IDC to the lowest responsive and responsible bidder and will then award the representative project as the first delivery order, as long as the low bid does not exceed the statutory amount.
- b. The Agency may also award an IDC to other bidder's starting with the second low bidder, then the third low bidder and so forth. The Agency must contract with a minimum of three contractors for each category of work (general construction, mechanical, etc.) for which it intends to issue delivery orders.
- c. When the Agency wants to issue a delivery order, it must seek quotes from all IDC contractors awarded a contract pursuant to a single solicitation and award the delivery order to the contractor submitting the lowest quote.

2. Cost Guide and Multiplier

- a. Under this method, the Agency selects a published or specially prepared cost data guide similar to R. S. Means Cost Data series, R. S. Means JOCWorks, The Gordian Group guides, Saylor Publications guides, etc., as a basis for determining the price of delivery orders.
- b. The Agency will solicit proposals from bidders for a multiplier the bidder will apply to the cost in the cost data guide for determining the cost of its work. The typical Base Bid will be a decimal number. A multiplier of 1.00 will reflect the same unit prices as shown in the cost data guide. A multiplier of 0.75 will reflect a price 25% lower than the unit prices listed in the cost data guide. The Agency will award an IDC to the bidder(s) with the lowest multiplier.
- c. Unless the IDC contractor proposes to provide work at a lower price, the Agency must use the IDC contractor's multiplier and the cost data guide to price delivery orders assigned under their contract.
- d. The bidding documents should clearly explain that the unit prices in the cost data guide include all overhead, delivery, setup, installation, and profit. The contractor may not add any additional mark-up to its price.
- e. If the contractor chooses to subcontract some or all of the work, the contractor must still use its multiplier with the cost data guide for pricing the subcontracted work. However, if the subcontracted work is outside the contractor's license, the contractor may include a markup of 13% on the price of the subcontracted work.
- f. If the contractor proposes not to use its multiplier and the cost data guide as the basis for the price of its work or subcontracted work, it must document that the proposed price is lower than the price would be if the contractor used the multiplier and cost data guide. The Agency must include this documentation in its file.
- g. Due to the significant effort and difficulties in verifying pricing for delivery orders under this approach - a difficulty often reflected in unreasonably low multipliers bid - using the cost guide and multiplier approach is not a preferred approach and Agencies are encouraged to seriously consider the low bid approach to awarding IDC's.

3. Unit Prices

- a. Under this method, the Agency develops a comprehensive list of unit prices it will use in the bidding documents. The bid form lists estimated quantities and a description of each unit of work the bidders are to price. The Agency must provide appropriate quantities for each unit of work that will reflect the estimated amount of work a contractor will perform under a typical delivery order. The bidders must supply the unit price and multiply it times the number of units listed to arrive at an extended price. The total of all extended prices becomes the bidder's base bid.

- b. The Agency may develop the bid package using an actual or hypothetical project with a complete take-off of work to be included for unit pricing. The Agency should include in the bid package a basis for adjusting the unit price should the actual quantity purchased vary substantially from the projected quantity.
- c. Using the unit prices bid, pricing for Delivery Orders and subcontracted work must be handled in the same manner as in 2.

B. BID SECURITY

The Agency shall require Bid Security equal to 5% of the amount of work guaranteed, if any, in the solicitation to each awardee. If the low bid method of award is used, 5% of the bid amount is required.

C. CONTRACTORS' LICENSING

- 1. A contractor bidding on IDC projects must be licensed as required by the SC Contractor's Licensing Board for the discipline of work covered by the solicitation and the license must allow the bidder to perform work valued at \$150,000 for executive Agencies and \$250,000 for Higher Education Institutions.
- 2. An Agency may not use an IDC contractor to broker work that is not covered by the contractor's license.

D. CONTRACT AWARD

At the successful conclusion of the sealed bidding process for the IDC, the Agency must post the SE-670, Notice of Intent to Award Indefinite Delivery Contract, in accordance with the procedures set forth in Part 6.19 of Chapter 6 of this Manual.

9.3.3 Delivery Orders Assigned to the Construction Services IDC

A. METHOD OF AWARD

- 1. Low Bid of a Representative Project
 - a. If the Agency has awarded IDC's using the low bid of a representative project method, it must solicit competitive quotations from all IDC contractors awarded a contract pursuant to a single solicitation for the work required by a delivery order. If one or more IDC contractors decline to provide a quote, the Agency must document that fact.
 - b. The Agency must receive at least two bonifide bids in order to award a delivery order. The Agency must award the delivery order to the contractor providing the lowest bid. The Agency shall make this award using the SE-690, Construction Services IDC Delivery Order.
 - c. The Agency must be cautious to assure that it has at least three contracts awarded pursuant to a single solicitation with active IDC's. If the Agency only awarded three IDC's originally and it has already awarded one of the original contractors \$750,000 in delivery orders, the Agency should solicit additional IDC contractors as outlined above.
- 2. Cost Guide and Multiplier or Unit Prices
 - a. Single IDC Contractor
 - 1) If the agency has awarded an IDC to a single contractor, it may award delivery orders to that contractor using the pricing method specified in the IDC.
 - 2) If the contractor proposes to provide the work at a price less than that calculated under the method prescribed in the IDC, the Agency may use the lower price if it includes in the file written documentation that the price is indeed lower.
 - 3) Before issuing the delivery order, the Agency should take in order the following steps:
 - a) Determine for itself what the scope of work is and which Cost Data Guide unit prices should be used to price the work;
 - b) Meet with the contractor to develop a written scope of work; and
 - c) Agree with the contractor in writing on the Cost Data Guide unit prices applicable to the scope of work.
 - 4) After taking these steps the Agency may issue a delivery order for the work which includes the agreed upon scope of work and Cost Data Guide unit prices applicable to that scope of work.

- 5) Before an agency issues a delivery order where more than 20% of the work is not covered by unit prices in the Data Guide or Unit Prices bid by the contractor, the agency should:
 - a) Determine whether the scope of work is within the scope of the solicitation for IDC construction services. If not, the agency should not issue a delivery order for the work under that IDC.
 - b) If the Agency determines that the proposed delivery order is within the scope of the solicitation for IDC construction services and decides to proceed using an IDC contractor selected under the solicitation, the agency must solicit competitive quotes on the work from multiple IDC contractors. The quote provided by each IDC contractor should be divided to separate work covered by the Cost Guide or bidder's unit prices and work not covered. The covered work should be priced at or below the value derived by applying the contractor's multiplier to the Cost Guide price or applying the contractor's unit prices for the covered work.
- b. Multiple IDC Contractors
 - 1) If the agency has awarded multiple contracts, it may provide each contractor a fair opportunity to receive delivery orders under the IDC by the use of competitive bidding among the various IDC contractors for an individual Delivery Order. However, if competitive bidding is used, each Indefinitely Delivery Contractor's price should not exceed the price obtained using their multiplier or unit prices bid.
 - 2) If competitive bidding is not used, the price of a delivery order must be determined in the manner set forth in 2.a. above.

B. DELIVERY ORDER FORM

1. The Agency shall award a delivery order using the SE-690, Construction Services IDC Delivery Order.
2. If the project is submitted to OSE for code review, the 'PROJECT NUMBER' will either be the PIP or Non-PIP number of the project for which the Work is to be completed. If the project is not required to obtain OSE approval, the "PROJECT NUMBER" may be the IDC project number with a 'phase' suffix.
3. The agency must establish delivery order numbers assigned to the contract for its record keeping purposes.

C. AMENDMENTS TO CONSTRUCTION SERVICES DELIVERY ORDERS

1. The parties may amend a Delivery Order provided the amendment does not cause the value of the Delivery Order or the IDC to exceed the statutory limits outlined in subsection 9.3.1.D.
2. Either the agency or the contractor may initiate a request for an amendment to the Delivery Order using form SE-695, Construction Services IDC Delivery Order Modification. The Agency shall price any amendment in the same manner as the price for the original delivery order.

D. PERFORMANCE AND PAYMENT BONDS

1. The Agency must obtain Performance Bonds and Labor & Material Payment Bonds in the amount of 100% of the Delivery Order amount for all Delivery Orders exceeding \$50,000.
2. The Agency may require bonds on Delivery Orders under \$50,000.

E. COMPLETION OF THE DELIVERY ORDER AFTER THE IDC TERMINATION DATE

1. Work on individual projects started within the two-year IDC contract period may continue past the time limit to bring the work to an expeditious completion.
2. In such event, the agency must notify the OSE in writing, in advance, of the need to start a project within the two-year period that it expects to continue past the time limit. Without such notification, OSE will automatically close out the IDC at the end of the two year contract period.

F. GUARANTEED MINIMUM AMOUNT OF WORK

1. An agency must meet its obligations to provide the minimum amount of work guaranteed in each contract.
2. If an agency has awarded multiple contracts for the same contractor's license category or subcategory, it must meet its obligations to each contractor to provide the minimum amount of work guaranteed in each contract.

CHAPTER 10

REAL PROPERTY

10.1 RELATED STATUTORY AUTHORITY

10.1.1 SC Code §1-11-65 requires that all transactions involving real property, made for or by any governmental bodies, excluding political subdivisions of the State, must be approved by and recorded with the State Fiscal Accountability Authority.

10.1.2 SC Code §2-47-50 requires all projects involving acquisition of real property to be established as a permanent improvement project (PIP).

10.2 ACQUISITION OF REAL PROPERTY *(See Chapter 7 and Appendix E of Part I of the Manual)*

An Agency desiring to acquire real property must work through the Capitol Budgeting Unit. For more details see Chapter 7 and Appendix E of the Manual for Planning and Execution of State Permanent Improvements – Part I (<http://www.admin.sc.gov/budget/capital-budgeting-unit/manual>).

10.3 DEMOLITION OF REAL PROPERTY

10.3.1 Obtaining Approval

- A. To assure proper notification and agreement of Real Property Services, notification of the Insurance Reserve Fund, and compliance with Title 2, Chapter 47 (requirements for establishment of a Permanent Improvement Project) the Agency may not demolish any buildings or other improvements until it receives written approval from the State Engineer.
 - 1. The State Engineer's approval does not substitute for nor does it absolve the Agency from obtaining other approvals required by law (e.g. Department of Health and Environment Control notification, State Historic Preservation office approval for historic structures and local zoning approvals).
 - 2. It is the Agency's responsibility to determine for itself which other requirements apply to its request and to comply with those requirements.
- B. Requests for approval to demolish real property must include the following:
 - 1. A copy of the Approval of the Agency's Governing Board or Agency Head;
 - 2. A complete description of the real property to be demolished, including age, size, type of construction, use, condition, exterior and interior photographs, etc.;
 - 3. Insurance policy number and segment ID for the building;
 - 4. The reason for demolishing the real property;
 - 5. The estimated cost of demolition; and
 - 6. The source of funds.
- C. When the Agency expects the cost of demolition to exceed \$100,000 (\$1,000,000 for higher education), the Agency must establish a PIP before submitting the request for approval to the State Engineer, unless the demolition is a part of an established PIP.
- D. The OSE will give notice of demolition of any building and/or permanent improvement to Real Property Services and the Insurance Reserve Fund.
- E. The agency must submit written notification of demolition to SCDHEC (Bureau of Air Quality Control) at least 10 working days before demolition begins, even if there is no asbestos present.

10.3.2 Demolition in Flood Hazard Zone

- A. When a demolition project is in a flood hazard zone, the Agency must obtain a permit from OSE prior to the start of any work. The SE-510, Permit to Develop in a Flood Hazard Area, submitted by the Agency must include the requirements listed in Chapter 5 and the following information:
 - 1. Where the Agency or its contractor will store the debris and for how long;
 - 2. Where the Agency or its contractor will store the demolition equipment and for how long; and
 - 3. If the project is located in a regulatory floodway, the effects of removing the structure on base flood elevations.

10.4 MOVING REAL PROPERTY

10.4.1 Any Agency wishing to move any existing building, including a modular building, onto state lands must first obtain the written approval of the State Engineer.

- A. The Agency must make all improvements necessary for the moved property to comply with the requirements of the applicable codes and standards for new structures as described in Chapter 5.
- B. The Agency must make these improvements within 90 days of the date of the State Engineer's written approval to move the property. The State Engineer may grant a time extension for matters beyond the control of the agency.

10.4.2 The Agency's requests for approval to move real property must include the following:

- A. A description of the structure to be moved, including age, size, type of construction, condition, etc.;
- B. The location of the structure and its current use;
- C. The location (provide map) the property is being moved to;
- D. The use of the property at the new location;
- E. The estimate of cost of moving;
- F. The cost of rehabilitation of the property for its new use;
- G. Plans and specification for improvements required in order for the property to comply with all applicable codes and standards as described in Chapter 5; and
- H. The source of funds for moving and rehabilitating the property.

10.4.3 When the Agency expects the cost of moving the structure to exceed \$100,000, it must establish a PIP before submitting the request for approval to the State Engineer.

10.4.4 The OSE will give notice of moving any building and/or permanent improvement to State Building and Property Services.

10.5 SALE OF REAL PROPERTY

10.5.1 When any agency determines that the best method of disposal or removal of a building is by sale to the public, it must obtain approval from the SFAA.

10.5.2 The Agency must submit requests for approval to General Services - Real Property Services. Contact Real Property Services for requirements.

10.6 LEASE - PURCHASE ARRANGEMENTS

10.6.1 Lease-purchases are those leases that provide for equity accrual, and eventual State ownership of the property.

10.6.2 The procedures and requirements listed in this chapter for the acquisition of real property may also apply to lease- purchase arrangements. Because the SFAA handles each lease-purchase on a case-by-case basis, the Agency should contact General Services - Real Property Services to determine the proper procedures.

10.6.3 The Agency must assure that the lessor prepares all construction plans and specifications for all lease-purchase construction projects in the same manner and to the same standards that apply to normal state construction projects.

10.6.4 At the time of purchase (transfer of ownership to the Agency), the Agency will have to have the property assessed in accordance with the requirements of the Capitol Budgeting Unit (see Part 10.2 above).

10.7 LEASING AND RENOVATION OF STATE PROPERTY BY OTHERS

10.7.1 If the Agency intends to lease state real property to another party, the Agency must do so through General Services - Real Property Services.

10.7.2 Any lessee intending to perform construction on or renovations to state property must do so in accordance with all applicable codes and standards described in Chapter 5. The lessee must prepare construction plans and specifications in the same manner and to the same standards that apply to normal state construction projects, and submit them to OSE for review and approval prior to construction.

10.7.3 The Procurement Code may apply to the design and construction of any improvements to state property leased to others. Because OSE handles such leases on a case-by-case basis, the Agency must contact OSE to determine the proper procedures.

10.8 LEASING AND RENOVATION OF NON-STATE PROPERTY BY A STATE AGENCY

10.8.1 The Agency must lease non-state property through General Services - Real Property Services.

10.8.2 If the Agency constructs on or renovates non-state property, it must procure such construction or renovation in accordance with the Procurement Code.

10.8.3 Construction plans and specifications for all construction projects involving non-state leased property, whether procured by the state agency or by the owner of the property, must comply with the requirements of the local building officials.

CHAPTER 11

CONSTRUCTION MANAGEMENT AT RISK

SUB-CHAPTER 11.1

SELECTING A CONSTRUCTION MANAGER AT-RISK COMPETITIVE SEALED PROPOSALS

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

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

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

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

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

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

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

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

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

11.1.5 ORGANIZATIONAL STRUCTURE AND STAFFING FOR CONDUCTING THE RFP PROCESS

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

A. ORGANIZATIONAL STRUCTURE

1. The organization consists of the Agency Procurement Officer (usually the Agency's Project Manager), an appointed selection committee that will evaluate the proposals, a technical advisor(s), the Official approval authority (the Agency Head or a designee and/or governing board) and anyone else appointed to the selection process.
2. Collectively, these individuals and groups constitute the Selection Team Members. The Selection Team includes anyone with access to an opened proposal or other source selection information and in addition to those listed above includes, anyone invited to attend oral presentation, reference-qualifiers, and negotiators and any qualified Consultant retained for this process.

[Commentary: (1) The Agency Procurement Officer is the employee designated by the Agency as the individual primarily assigned and responsible for the conduct of the procurement of CM-R services. (2) The Consolidated Procurement Code does not use the term "Project Manager." However, a Project Manager (authorized representative) may be the Procurement Officer if the Agency designates him/her to be the Procurement Officer. This document uses the term Procurement Officer throughout to be consistent with the Consolidated Procurement Code. (3) The Procurement Officer is responsible for assuring the Agency's procurement of CM-R services complies with the Procurement Code.]

The Selection Committee (Selection Team Members) may assist the Agency Procurement Officer in developing the Selection Plan. The Selection Committee evaluates and ranks statements of qualifications and proposals in accordance with the Selection Plan, RFQ, and RFP. The Selection Committee is also responsible for the preparation of report(s) on the evaluation results. The Selection Committee reports to the individual with the responsibility for final Agency approval of the selection.

B. SPECIFIC RESPONSIBILITIES

1. Agency Head or his/her designee: The Agency Head (approval authority), acting as the final selection authority, is responsible for the following:
 - a. Directing the Agency's efforts during the entire source selection process.
 - b. Reviewing and approving of the Selection Plan (including ranking criteria) and the Request for Proposals (RFP).
 - c. Appointing the members of the Selection Committee, other than the Chair (OSE must concur with the proposed Committee Team membership).
 - d. Reviewing and approving the schedule of all actions required from receipt of proposals to signing of the contract (Note: this schedule is not intended to unduly limit competition).
 - e. Providing the Selection Committee with appropriate guidance and special instructions as may be necessary for conducting the evaluation and selection process including approving the evaluation factors and weights assigned.
 - f. Reviewing and approving the Selection Committee's competitive range determination for the construction manager at-risk's pre-construction phase management fee and construction phase fee, if any.
 - g. Reviewing and approving the Selection Committee's final report and selection. The Agency Head may choose to reject the Committee's final choice by directing the Procurement Officer to cancel the solicitation prior to award in accordance with the procedures set forth in Regulation 19-445.2097(B).

2. Agency Procurement Officer: Subject to the policies and procedures of a specific agency, the Procurement Officer is responsible for the following:
 - a. Preparing and submitting the elected Selection Plan to the Agency Head and the Office of State Engineer for approval.
 - b. Assuring that each Selection Team Member and any other appointed participant who may be given access to source selection information, signs and returns an SE-414, Confidentiality & Conflict of Interest Policy, before they are provided access to source selection information.
 - c. Posting notices of all selection committee meetings in accordance with the Freedom of Information Act (FOIA) open meeting requirements.
 - d. Preparing the RFQ and/or RFP outline, with the assistance of assigned program and/or technical personnel.
 - e. Coordinating with the Selection Committee, the Agency Head, and OSE on the preparation and issuance of the RFQ and/or RFP.
 - f. Issuing any amendments to the RFQ or RFP in conjunction with the OSE approval.
 - g. Conducting pre-proposal conferences in accordance with established procedures, meeting minutes and attendance.
 - h. Preparing South Carolina Business Opportunities (SCBO) announcements.
 - i. Safeguarding confidential information and materials, including proposals and amendments.
 - j. Conducting or coordinating cost or price analyses and documenting the results.
 - k. Participating as a voting member of the Selection Committee.
 - l. Determining offeror responsiveness and responsibility.
 - m. Conducting or controlling all discussions and negotiations with offerors.
 - n. Maintaining written records of all discussions and negotiations with offerors.
 - o. Requesting best and final offers.
 - p. Preparing the Selection Committee's report and recommendation to the Agency Head.
 - q. Taking all necessary contractual actions.
 - r. Conducting the debriefing of unsuccessful offerors after the posting of the Notice of Intent to Award.
 - s. Maintaining all required records produced by the Committee including written records, rankings and pertinent emails.
3. Selection Committee Chair: The Selection Committee Chair is a non-voting member appointed by the State Engineer. The Committee Chair's duties include the following:
 - a. Coordinating the scheduling of and assisting in conducting Committee meetings and deliberations.
 - b. Providing overall supervision, planning direction, and execution of the Committee's activities.
 - c. To the extent permitted by Agency planning and activities, completing the Committee's responsibilities within the prescribed period established in the Agency Plan.
 - d. Making final determinations of responsiveness on individual proposals.
 - e. Summarizing the raw evaluation data.
 - f. Assisting the Agency Procurement Officer in debriefings to the extent requested.

C. COMMITTEE MEMBERSHIP

1. The Selection Committee should normally be composed entirely of State employees. For the purposes of selection, members of Agency Boards, acting in their official capacity, are State employees.
2. The Committee should be comprised of a minimum of five voting members.
3. The State Engineer **or his designee** must concur in all RFP selection committee appointments.
4. Committee members must sign an SE-414, Confidentiality & Conflict of Interest Policy.
5. There are no rules on which employees may be appointed to a committee. The following is one possible committee structure:
 - a. A designee of the board or commission governing the Agency;
 - b. A designee of the Agency head (Secretary, Executive director, President, or like officer from a Governmental Body);

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

[Commentary: Ideally, a selection committee will not include both a supervisor and someone he/she supervises.]

- 6. Other possible members, as either voting or non-voting members are:
 - a. Agency construction director or his designee;
 - b. Agency engineering and planning director or his designee;
 - c. Agency physical plant director or his designee; and
 - d. Other Agency technical staff as appropriate to the project*

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

D. TECHNICAL ADVISORS

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

E. CHANGES IN SELECTION COMMITTEE MEMBERSHIP

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

11.1.6 SELECTION PLAN FOR THE RFQ/RFP PROCESS

A. DEFINITIONS

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

B. MINIMUM REQUIREMENTS

The Plan must include the following, as a minimum:

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

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

C. PREPARATION AND APPROVAL OF THE PLAN

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

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

1. The Consolidated Procurement Code requires adequate public notice of the invitation for bids.
2. This notice (advertisement) must include publication in South Carolina Business Opportunities (SCBO). However, the Procurement Code recognizes that this alone may not constitute adequate public notice. Therefore, the Agency needs to develop a solicitation plan that provides adequate public notice for real competition on the project at hand.
3. The plan must describe how the Agency will advertise for proposals (or in the case of prequalification, statements of qualification) and/or how the Agency intends to develop interest in the project other than through advertising in SCBO.
4. The plan must also set forth the minimum number of days that the Agency will advertise the project.

11.1.7 REQUESTS FOR QUALIFICATION* RFQ*(I.E. PREQUALIFICATION) SC Code Ann § 11-35-3023(A)

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

G. ADVERTISING— SC Code Ann § 11-35-150(2) & § 11-35-1520(3)

The Agency must advertise the RFQ in accordance with the solicitation plan included in the approved Selection Plan. This includes providing adequate notice in the manner provided in SC Code Ann § 11-35-1520(3) (adequate notice in SCBO).

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

1. The Agency may conduct a pre-qualification/proposal conference to explain the project and RFQ to interested firms. Conducting a pre-qualification/proposal conference at the RFQ stage will allow the Agency to gauge interest in the project, and solicit input from potential offerors regarding how best to address complex aspects of the project thus promoting competition.
2. When the Agency determines that a pre-qualification/proposal conference is in its best interest, the Agency must notify all firms receiving RFQs and advertise the conference in SCBO. The Agency must give adequate notice to prospective offerors so that all who wish to attend may arrange for representation. The notice must define as explicitly as possible the nature and scope of the conference.
3. At the pre-**qualification**/proposal conference, the Agency must furnish all prospective offerors identical information in connection with the proposed acquisition. The Agency may not use remarks and explanations at the conference to modify or qualify the terms of RFQ. If the Agency wishes to modify or qualify the terms of the RFQ, it must do so by written amendment. The Agency must make a complete record of the conference and make the record a part of its procurement file.

I. RECEIPT AND OPENING OF STATEMENT OF QUALIFICATIONS

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

J. EVALUATION AND RANKING OF PROSPECTIVE OFFERORS

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

K. NUMBER OF FIRMS PREQUALIFIED

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

L. NOTIFICATION

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

11.1.8 THE REQUEST FOR PROPOSAL (RFP)**A. THE RFP**

1. The Agency must prepare a RFP that will clearly communicate to the offerors both the Agency's needs and the evaluation factors the Selection Committee will use in the evaluating the proposals. The RFP should not include the Selection Plan.
2. The RFP must:
 - a. Advise prospective offerors on how their proposals should be organized and arranged,
 - b. Provide that offerors must submit the technical and price or cost portions of their proposals in separate sealed envelopes,

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

11.1.9 NON-DISCLOSURE OF PROCUREMENT AND CONFIDENTIAL INFORMATION

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

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

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

[Commentary:

(1) Limitations outlined herein apply to all types of communications addressed in this Part, or Parts 11.1.17 and 11.1.18.

(2) Prior to posting an award, or intent to award, regulation 19-445.2010(D) prohibits anyone from disclosing either the number of offerors or their identity unless required to do so by law.

(3) Regulation 19-445.2010(c) allows the responsible procurement officer to authorize certain disclosures in writing.]

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

11.1.10 PROCUREMENT INTEGRITY (CONFLICTS OF INTEREST/ETHICS)

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

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

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

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

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

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

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

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

- C. The Agency must prepare a Register of Proposals that identifies the project and includes the name of each offeror and the number of modifications received, if any.
- D. The person opening the proposals and the witness must certify the Register of Proposals in writing as true and accurate.
- E. The Agency may not make the Register of Proposals open to public inspection until after the issuance of an award or notification of intent to award, whichever is earlier.
- F. The Agency must not disclose the contents and the identity of competing offers during the process of opening proposals.
- G. If members of the public appear at the opening, the person opening the proposals should state that he/she will conduct the opening of proposals and recording of the names in silence to protect confidential information.

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

The Chief Procurement Officers have jointly published guidelines for communications with offerors after opening proposals but prior to award. These guidelines are set forth Appendix I of this Manual.

11.1.15 REJECTION OF PROPOSALS AND CANCELLATION OF SOLICITATION

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

A. REJECTION OF INDIVIDUAL PROPOSALS – SC Code Ann Regs 19-445.2095(J)

- 1. The Agency does not need to accept proposals unconditionally without alteration or correction, and to the extent otherwise allowed by law (see 6.2.15 above), the State's stated requirements may be clarified after proposals are submitted. The Agency must consider this flexibility in determining whether reasons exist for rejecting all or any part of a proposal.
- 2. Reasons for rejecting proposals include but are not limited to the following:
 - a. The business that submitted the proposal is non-responsible as determined under Section 11-35-1810;
 - b. The proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect; or
 - c. The proposed price is clearly unreasonable.
- 3. The Agency must document the reasons for cancellation or rejection and make the documentation a part of the procurement file available for public inspection.

B. REJECTION OF ALL PROPOSALS – CANCELLATION OF SOLICITATION PRIOR TO AWARD

SC Code Ann Regs 19-445.2097

- 1. Unless there is a compelling reason to reject all proposals, the Agency, after receiving and opening proposals, must award a contract. Subject to the provisions of SC Code Ann § 1530, this award must be to the highest ranked responsible offeror.
- 2. Should the Agency decide to cancel a solicitation after opening proposals but before award, the Agency must determine in writing that:
 - a. inadequate or ambiguous specifications were cited in the solicitation;
 - b. specifications have been revised;
 - c. the supplies, services, information technology, or construction being procured are no longer required;
 - d. the solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
 - e. proposals received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the proposals were requested;
 - f. all otherwise acceptable proposals received are at unreasonable prices;
 - g. the proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
 - h. for other reasons, cancellation is clearly in the best interest of the State.
- 3. If the determination is due to a change in requirements, the Agency must show in its determination that prior to opening, it made every effort to anticipate changes in requirements. Any determination to cancel the solicitation must be made in good faith (honesty in fact, fair dealing). *SC Code Ann § 11-35-30, See In Re: Protest of Wometco Food Services, Inc. SCPD 1991-14.*

11.1.16 SELECTION COMMITTEE MEETINGS AND RANKING OF PROPOSALS

- A. SELECTION COMMITTEE MEETINGS SUBJECT TO OPEN MEETING REQUIREMENTS – *SC Code Ann § 30-4-60***
1. Every meeting of public bodies must be open to the public unless closed pursuant to SC Code Ann § 30-4-70. A Selection Committee is a body subject to this requirement. Every meeting of the Selection Committee must be publicly announced at least twenty-four hours before the meeting.
 2. When a meeting is held to discuss source selection information such as ranking statements of qualifications and proposals, the meeting will open publicly and any item on the agenda which is not protected source selection information will be addressed publicly.
 3. Thereafter, the Selection Committee should adjourn to go into executive session to discuss source selection information. The public must be excluded from these executive sessions with no exceptions.
- B. PROPOSAL RANKING BY INDIVIDUAL COMMITTEE MEMBERS**
1. Each member of the selection committee must examine each proposal in detail to measure its contents against the established standards for evaluation factors.
 2. Because the ranking method may not convey fully the individual evaluator's judgment of some aspects of the proposal, each evaluator must supplement each ranking with a concise narrative evaluation that includes a discussion and interpretation of the limitations of the ranking. The narrative should summarize the strong and weak points of each proposal recording what the offeror offered and how the offer met the established requirements, and it summarizes the strong and weak points of what the offeror has proposed. In instances where the offeror has failed to meet a critical requirement, the evaluator assesses what should be done to remedy the deficiency and what the impact of the deficiency (corrected or uncorrected) is on the overall proposal.
 3. Each committee member must turn his/her signed evaluation and narrative into the committee chair with a copy to the Agency Procurement Officer.
- C. CONSENSUS OF SELECTION COMMITTEE**
1. The Selection Committee assigns the final score or ranking for each technical proposal by consensus.
 2. After the individual members have separately evaluated the proposals, including preparation of their narrative explanations, the Selection Committee must meet and formulate its collective conclusions. The committee must discuss significant variations in evaluators' scores or assessments of technical merit and resolve discrepancies or fully explain them in the record.
 3. The Agency Procurement Officer must prepare for the committee's approval, a narrative justification of the final score or ranking the committee assigns to each proposal. This narrative justification must demonstrate that the Committee based its final selection on an intelligent and rational judgment of the technical merits of each competing proposal.
 4. The committee must attach narrative justification to the final score or ranking it assigns to each proposal.
- D. SELECTION COMMITTEE REPORT AND RECOMMENDATION**
1. After the Selection Committee evaluates the proposals, the Agency Procurement Officer must prepare a committee report. The Chair and each Committee member must sign the report.
 2. The report must rank each offeror's proposal from the most advantageous to the least advantageous. For each offeror, the report should provide the final score and a summary analysis of each proposal including an assessment of the offeror's compliance with the requirements of the solicitation, any changes to the technical evaluation scores and a narrative to support the changes.
 3. The report must include the Committee's recommendation regarding the source(s) the Agency should select for negotiation or award. The Committee must support a recommendation to negotiate or award with a higher priced offeror with a written finding that the technical superiority of the higher priced offer relative to other offers, warrants the additional cost. The Committee must document the rationale for the finding of technical superiority in detail. Unsupported conclusory statements are not acceptable.
 4. The report must include a cover page to the report identifying the procurement and including the names and signatures of the Committee members.

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

When price is an initial evaluation factor, award may be made to the highest ranking offeror without conducting negotiations. However, Section 11-35-1530(9) provides that "the procurement officer, in his sole discretion and not subject to review under Article 17, may proceed in any of the manners" allowed in SC Code § 11-35-1530(8) (Part 11.1.17 and/or Part 11.1.18 below). As used in that sentence, the term "sole discretion" applies to the decision whether or not to negotiate at all, i.e., whether to make an award to the highest ranked offeror without negotiations or to conduct negotiations.

11.1.18 NEGOTIATIONS AFTER EVALUATION AND RANKING

- A.** Negotiation is an exchange between the Agency and an offeror undertaken with the intent of allowing the offeror to revise its proposal. Negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.
- B.** Negotiated proposal revisions may affect the scope of the proposed contract, so long as the changes are within the general scope of the request for proposal.
- C.** Negotiations are optional.
- D.** Negotiations must be controlled by the Agency Procurement Officer

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

- E.** (3) The primary objective of negotiations is to maximize the Agency's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. [11-35-310(28); 11-35-1530(9)]
- F.** Negotiations are tailored to each offeror's proposal.
- G.** Negotiations must be meaningful. The procurement officer is encouraged to discuss those aspects of an offeror's proposal that could, in the opinion of the procurement officer, be altered or explained to enhance materially the proposal's potential for award. However, the procurement officer is not required to discuss every area where the proposal could be improved. The scope and extent of negotiations are a matter of procurement officer judgment.
- H.** Negotiations must be conducted in good faith.

[Commentary:

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

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

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

- I.** Negotiations should not involve a significant change to the solicitation. If the procurement officer makes changes to the solicitation's mandatory requirements or general scope, the procurement officer must request best and final offers pursuant to Part 11.1.8 below.
- J.** Once negotiations with a vendor begin, the procurement officer must attempt, in good faith, to successfully negotiate a "satisfactory contract" - without regard to any other proposals received. (Negotiations are not an opportunity to re-evaluate one offeror against another. That step took place during the evaluation and ranking.)
- K.** If the procurement officer concludes that a satisfactory contract cannot be negotiated, the procurement officer may then proceed as allowed by section 11-35-1530(8). In evaluating whether or not a contract is satisfactory, the stated evaluation factors must form the ultimate basis of your decision.
- L.** Under 11-35-1530(9), the contract file must contain the basis on which the award is made. Under 11-35-310(28), the award of the contract must be made on the basis of the evaluation factors stated in the solicitation. If award is made to the highest ranked offeror without negotiations, the basis for award should appear in the written determination explaining the evaluation and ranking. If award is made after negotiations, the basis for award must also explain (i) the results of any negotiations, and (ii) the reasons any negotiations were unsuccessful, i.e., why a satisfactory contract could not be negotiated with an offeror
- M.** If an offeror's initial price is considered unacceptable, make a determination of price unreasonableness under R. 19-445.2095(J)(1)(c) prior to ranking. Negotiations are not a mechanism to price shop. If a price reduction cannot be negotiated, the BAFO process may be appropriate.

11.1.19 BEST AND FINAL OFFERS (BAFO)

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

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

11.1.20 AWARD

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

11.1.21 NOTICE OF INTENT TO AWARD

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

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

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

11.1.23 SUBMITTING THE CONTRACT TO CONTRACTOR FOR EXECUTION

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

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

11.1.24 REVIEWING CERTIFICATE OF INSURANCE AND PERFORMANCE AND PAYMENT BONDS

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

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

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

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

11.1.26 NOTIFICATION TO UNSUCCESSFUL OFFERORS AFTER NOTICE OF AWARD

- A. When the Agency awards a contract for construction on a basis other than price alone, the Agency must furnish the basis for the selection decision and contract award to unsuccessful offerors upon their written request.
- B. The Agency should provide unsuccessful offerors with a debriefing upon request.

CHAPTER 11
CONSTRUCTION MANAGEMENT AT RISK
SUB-CHAPTER 11.2
ADMINISTERING THE CM-R CONTRACT

TO BE DEVELOPED

CHAPTER 12

DESIGN-BUILD, DESIGN-BUILD-OPERATE-MAINTAIN & DESIGN-BUILD- FINANCE-OPERATE-MAINTAIN

SUB-CHAPTER 12.1

SELECTING THE DESIGN-BUILDER USING COMPETITIVE SEALED PROPOSALS

(Design-Build, Guaranteed Energy Savings Contracts)

12.1.1 DEFINITIONS

A. **Design-Build** – *SC Code Ann 11-35-2910(7), (8), (9), (10), & (11)*

1. “Design-build” is a project delivery method in which the Agency enters into a single contract for design and construction of an infrastructure facility. Design-Build may include bundling additional services into a single contract. For purposes of the following portions of this sub-chapter, the term “design-build” includes the following:
 - a. Guaranteed energy, water, and wastewater savings projects.
 - b. Design-build-operate-maintain: A project delivery method in which the Agency enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period.
 - c. Design-build-finance-operate-maintain: A project delivery method in which the Agency enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period.
2. “Design requirements” are the written requirements of the infrastructure facility the Agency intends to procure using Design-Build, including:
 - a. The features, functions, characteristics, qualities, and properties that the Agency and State require;
 - b. The anticipated schedule, including start, duration, and completion; and
 - c. The budgets, as applicable to the specific procurement, for design, construction, operation, and maintenance.

The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project. Unless the Agency has the professional staff necessary to prepare the design requirements, it should hire a design professional to do so using the qualification based selection process set forth in Chapter 4 of this Manual.

3. “Independent peer reviewer services” are additional architectural and engineering services that an Agency must acquire, except as otherwise provided in this Manual, in procurement of Design-Build services. The function of the independent peer reviewer is to confirm that the key elements of the professional engineering and architectural design provided by the contractor are in conformance with the applicable standard of care. If an Agency elects not to contract with the independent peer reviewer proposed by the successful offeror, the Agency must select the independent peer reviewer through qualifications based selection in accordance with Chapter 4 of this Manual.

B. **Operations and Maintenance** – *SC Code Ann § 11-35-2910(13)*

“Operations and Maintenance” is a project delivery method in which the Agency enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.

C. **Guaranteed Energy, Water, or Wastewater Savings Contracts** - *SC Code Ann §48-52-670*

"Guaranteed energy, water, or wastewater savings contract" are Design-Build contracts for the evaluation and recommendation of energy, water, or wastewater conservation measures and for implementation of one or more of these measures. Such contracts often include financing by providing that all payments to the contractor (except obligations on termination of the contract before its expiration) will be made over time and the cost savings or billable revenue increases resulting from implementation of the energy, water, or wastewater conservation measures will be used to make payments for the energy, water, or wastewater conservation systems installed pursuant to the contract. This is in essence a Design-Build-Finance arrangement. The Agency must procure such contracts using the Request for Proposal process. See SC Code Ann § 48-52-670(B) and § 11-35-3015.

The State Energy Office publishes information for Public entities to use in Performance Contracting at <http://www.energy.sc.gov/perfcont> . The State Energy Office's website at may be viewed at www.energy.sc.gov.

12.1.2 SOURCE SELECTION METHOD - *SC Code Ann § 11-35-3015(5), (6), & (7) and Chapter 2.1*

The Procurement Code provides that the Design-Builder must be selected using competitive sealed proposals. The competitive sealed proposal source selection method is referred to throughout this document as the Request for Proposal (RFP) process.

12.1.3 ORGANIZATIONAL STRUCTURE AND STAFFING FOR CONDUCTING THE RFP PROCESS

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

A. Organizational Structure

1. The organization consists of a selection committee to evaluate the proposals and a final approval authority (the Agency Head or a designee).
2. The Selection Committee is composed of a non-voting Chair appointed by the State Engineer and voting and non-voting members appointed by the Agency, as set forth in Part C below.
3. The Selection Committee assists the Agency Project Manager in developing the Selection Plan for evaluating proposals in accordance with the Plan and the RFP.
4. The Selection Committee is also responsible for the preparation of report(s) on the evaluation results.
5. The Selection Committee reports to the individual with the responsibility for final Agency approval of the selection.

B. Specific Responsibilities

1. Agency Head or his/her designee: The Agency Head, acting as the final selection authority, is responsible for the following:
 - a. Directing the Agency's efforts during the entire source selection process.
 - b. Reviewing and approving the Selection Plan and the Request for Proposals (RFP).
 - c. Appointing the members of the Selection Committee, other than the Chair. OSE must concur with the proposed Committee membership.
 - d. Reviewing and approving the schedule of all actions required from receipt of proposals to signing of the contract.
 - e. Providing the Selection Committee with appropriate guidance and special instructions as may be necessary for conducting the evaluation and selection process including approving the evaluation factors and weights assigned.
 - f. Reviewing and approving the Selection Committee's final report and selection. The Agency Head may choose to reject the Committee's choice, but such action will require a new procurement.
2. Agency Project Manager: Subject to the policies and procedures of a specific agency, the Project Manager is responsible for the following:
 - a. Preparing and submitting a draft of the Selection Plan to the Selection Committee for its review;
 - b. Preparing and submitting the final Plan to the Agency Head and the Office of State Engineer for approval;
 - c. Preparing the Request for Proposals, with the assistance of program and/or technical personnel;
 - d. Coordinating with the Selection Committee, the Agency Head, and the OSE on the preparation and issuance of the RFP;
 - e. Issuing any amendments to the RFP in conjunction with the OSE;
 - f. Conducting pre-proposal conferences in accordance with established procedures;
 - g. Preparing South Carolina Business Opportunities (SCBO) announcements;
 - h. Safeguarding classified or other sensitive materials, including proposals and amendments;
 - i. Conducting or coordinating cost or price analyses and documenting the results;
 - j. Participating as a voting member of the Selection Committee;
 - k. Promptly notifying all offerors eliminated from the competition;
 - l. Determining contractor responsibility;
 - m. Conducting or controlling all discussions and negotiations with offerors;

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

C. Committee Membership

1. The Selection Committee should be composed of State employees. For the purposes of selection, members of Agency Boards, acting in their official capacity, are State employees.
2. The State Engineer must concur in all RFP selection committee appointments.
3. Committee members must sign nondisclosure and conflict of interest statements.
4. The Committee should be comprised of a minimum of five voting members. For large projects (\$5 million or more), the Agency appointed members should consist of:
 - a. One member of the board or commission, if any, governing the Agency or a designee of such board or commission;
 - b. The agency head (secretary, executive director, president, or like officer) or his designee;
 - c. One representative of the division, department, or program for which the project is being built;
 - d. Agency project manager; and
 - e. Agency facilities director or his designee.
5. If different than any of the above, the Agency may appoint the following additional members as either voting or non-voting members:
 - a. Agency Finance VP or other financial expert;
 - b. Agency engineering and planning director or his designee;
 - c. Agency physical plant director or his designee; and
 - d. Other Agency technical staff as appropriate to the project*

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

D. Technical Advisors

1. The Agency Head should appoint outside technical advisors with special expertise not available on the Selection Committee but essential to the selection process.
2. Advisors must sign nondisclosure and conflict of interest statements.
3. The Agency should use Advisors in discrete areas such as reviewing technical aspects of proposals to assure compliance with the technical requirements of the RFP. The Agency should not give Advisors access to information concerning overall Committee activities and should not attend Committee meetings unless specifically requested by the Committee Chair.

E. Changes in Selection Committee Membership

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

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

- A. Using the SE-714, DBx Selection Committee - Confidentiality & Conflict of Interest Policy, the Chair of the Selection Committee must instruct the committee members and technical advisors of the Procurement Code's requirements for ethical conduct, and require each member to sign a statement that he has read and understands those standards of conduct and that he does not have an actual or apparent conflict of interest relating to the proposed acquisition.
- B. If an evaluator has an actual or apparent conflict of interest related to a proposal under evaluation, the Chair must remove that evaluator and, if a sufficient number of evaluators do not remain, replace him with another.

12.1.5 SELECTION PLAN FOR THE RFP PROCESS**A. Definition**

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

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

B. Minimum Requirements

The Plan must include the following, as a minimum:

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

C. Preparation and Approval of the Plan

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

D. Solicitation Plan - SC Code Ann § 11-35-1530(2)

1. The Consolidated Procurement Code requires adequate public notice of the invitation for bids.
2. This notice (advertisement) must include publication in South Carolina Business Opportunities (SCBO). However, the Procurement Code recognizes that this alone may not constitute adequate public notice. This is especially the case for unique projects such as design-build-finance operate-maintain projects. Therefore, the Agency needs to develop a solicitation plan that provides adequate public notice for real competition on the project at hand.
3. The plan must describe how the Agency will advertise for proposals (or in the case of prequalification, statements of qualification) and/or how the Agency intends to develop interest in the project other than through advertising in SCBO.
4. The plan must also set forth the minimum number of days that the Agency will advertise the project.

12.1.6 PRE-QUALIFICATION - THE REQUEST FOR STATEMENTS OF QUALIFICATION

When the Agency selection plan provides for short listing of Design-Builders through pre-qualification and OSE has approved pre-qualification, the Agency must work under OSE's supervision to pre-qualifying bidders.

12.1.7 THE REQUEST FOR PROPOSAL (RFP)**A. The Solicitation**

1. The Agency must prepare a solicitation that will clearly communicate to the offerors both the Agency's needs and the evaluation factors the Selection Committee will use in the evaluating the proposals.
2. The solicitation should not include the Selection Plan.
3. The solicitation must:
 - a. Advise prospective offerors on how their proposals should be organized and arranged.
 - b. Provide that offerors must submit the technical and price or cost portions of their proposals in separate sealed envelopes.
 - c. Inform offerors of the evaluation factors for award and information on the source selection system the Agency will employ including a statement of all significant factors and sub-factors (including price) which the agency reasonably expects to consider in evaluating proposals and the relative importance assigned to each of these factors.
 - d. Inform offerors of minimum requirements that apply to particular evaluation factors and significant sub-factors.

B. The Solicitation: Additional Requirements for Design-Build – SC Code Ann § 11-35-3024

For a Design-Build project, an Agency solicitation, in addition to the requirements of Part 12.1.7(A) above must:

1. Include the Agency's design requirements;
2. Solicit proposal development documents;
3. If the Agency determines the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement, may:
 - a. Provide for pre-qualification of offerors in accordance with SC Code Ann § 11-35-3023;
 - b. Provide for short-listing of responsive and responsible offerors determined to be reasonably susceptible of being selected for award before discussions and evaluations pursuant to SC Code § 11-35-1530 provided:
 - (1) The RFP states the number of proposals the Agency will short-list, and
 - (2) The Agency gives prompt public notice of which proposals it short-lists.
 - c. Provide for the payment of stipends to unsuccessful offerors if:
 - (1) The RFP includes the amount of the stipend, and
 - (2) The RFP includes the terms under which the Agency will pay stipends.
4. In addition to any other evaluation factors, must include the relative importance of the following required evaluation factors:
 - a. Demonstrated compliance with the design requirements;
 - b. Offeror qualifications;

- c. Financial capacity;
 - d. Project schedule;
 - e. Price, or, for Design-Build-Operate-Maintain or Design-Build-Finance-Operate-Maintain, life-cycle price; and
 - f. Competence and qualifications of offerors proposed independent peer reviewer if the offeror is required to provide a peer reviewer as a part of its proposal.
5. Must require each offeror to identify an independent peer reviewer; unless the Agency plans to directly hire an independent peer reviewer using the procedures for procuring professional services set forth in Chapter 4.

C. Requirement for an Independent Peer Reviewer

SC Code Ann §§ 11-35-2910(11), 3024(3)(b), and Regulation 1-445.2145(A)(7)

- 1. An Agency must retain an independent peer reviewer on each Design-Build project unless excused by the State Engineer.
- 2. If the Agency desires to forego an independent peer reviewer, the Agency must submit to the State Engineer a written determination that considering the nature, size, and scope of the project, the Agency has personnel on staff qualified to perform the functions of the independent peer reviewer.
- 3. The Agency must include the qualifications of the personnel who will perform the functions of the independent peer reviewer.
- 4. The State Engineer will within 10 days of receipt of the Agency's determination, notify the Agency of his determination, in writing, whether to allow the Agency to forego an independent peer reviewer.

D. Licensing and Bonding Requirements for Design-Builders

SC Code Ann §§ 40-11-10 et seq., §§ 11-35-3010 & 3037 and Regs 19-445.2145(C)

- 1. The Design-Builder must comply with all licensing requirements of the SC Department of Labor, Licensing and Regulation.
- 2. The Design-Builder must provide a Performance Bond and a Labor and Material Payment bond, both for 100% of the cost of design and construction.
- 3. The Agency may require one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately or as one element of another project delivery method:
 - a. Operations period surety bonds that secure the performance of the contractor's operations and maintenance obligations;
 - b. Letters of credit in an amount appropriate to cover the cost to the governmental body of preventing infrastructure service interruptions for a period up to twelve months; and
 - c. Appropriate written guarantees from the contractor, or depending upon the circumstances, from a parent corporation, to secure the recovery of re-procurement costs to the governmental body if the contractor defaults in performance.

E. Advertising – SC Code Ann § 11-35-1530(2) & § 11-35-1520(3)

The Agency must advertise the solicitation in accordance with the solicitation plan included in the approved Selection Plan.

F. Pre-Proposal Conferences – SC Code Ann Regs 19-445.2095(H)(1)

- 1. The Agency may conduct a pre-proposal conference to explain or clarify the solicitation and complicated specifications and requirements (e.g., proposal format) to interested firms. The Agency should use any such conference to eliminate misunderstandings that may arise from misinterpretation, complexity, errors, omissions, or other deficiencies.
- 2. When the Agency determines that a pre-proposal conference is in its best interest, the Agency must notify all firms receiving solicitations and advertise the conference in SCBO.
- 3. The Agency must give adequate notice to prospective offerors so that all who wish to may arrange for representation. The notice must define as explicitly as possible the nature and scope of the conference.
- 4. At the pre-proposal conference, the Agency must furnish all prospective offerors identical information in connection with the proposed acquisition.
- 5. The Agency may not use remarks and explanations at the conference to modify or qualify the terms of the solicitation and specifications. If the Agency wishes to modify or qualify the terms of the solicitation and specifications, it must do so by written amendment.
- 6. The Agency must make a complete record of the conference and make the record a part of its procurement file.

12.1.8 NON-DISCLOSURE OF PROCUREMENT AND CONFIDENTIAL INFORMATION

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

- A. Prior to a contract award or posting of Notice of Award, personnel participating in the procurement process may not reveal source selection information to any unauthorized person. Anyone receiving a request for information before contract award or posting of Notice of Award must forward the request to the project manager.
- B. Personnel participating in the procurement process may not reveal proprietary information submitted by offerors to any unauthorized person at any time.
- C. All personnel who participate in the procurement process must sign an agreement not to discuss or reveal information concerning the process except to an individual participating in the same proceeding, and then only to the extent that the information is required in connection with the proceedings.
- D. **“Source Selection Information”**
 - 1. Source selection information includes information stored in electronic, magnetic, audio, or video formats, prepared or developed for use by the State to conduct a particular procurement.
 - 2. Source selection information is information that would jeopardize the integrity or successful completion of a particular procurement if someone were to disclose it to a competing contractor.
 - 3. Source selection information is required by statute, regulation or order to be secured in a procurement file or other facility to prevent disclosure.
 - 4. Source selection information is limited to the following:
 - a. Proposed costs or prices submitted in response to an Agency solicitation, or lists of those proposed costs or prices;
 - b. Source selection plans;
 - c. Technical evaluation plans;
 - d. Technical evaluations of proposals;
 - e. Cost or price evaluation of proposals;
 - f. Information regarding which proposals are determined to be reasonably susceptible of being selected for award;
 - g. Rankings of responses, proposals, or competitors;
 - h. Reports and evaluations of the selection committee; and
 - i. Other information based on a case-by-case determination of the Agency Head or OSE that its disclosure would jeopardize the integrity or successful completion of the procurement.
- E. **“Proprietary Information”** - Any information submitted to the State by a contractor and designated as proprietary, in accordance with law or regulations, by the contractor.

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

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

- C. Of particular concern would be the situation where the lead member of the proposing team prepared the design requirements that will be used to evaluate proposals. An example of such a situation follows:

An Energy Savings Contractor (ESCO) prepares an energy audit for the Agency which the Agency uses as the basis for its solicitation of a guaranteed energy savings contract. We will call this entity ESCO-A.

Any anticipated offeror will be submitted by an ESCO or a team led by an ESCO. Moreover, the Agency will select an offeror to be its guaranteed energy saving contractor primarily based on its (the ESCO's) qualifications and energy savings proposal. Under such a situation, ESCO-A will have a clear advantage. ESCO-A will have had an opportunity to develop an advantageous relationship with the Agency that may skew the rankings. ESCO-A will be in a position to start developing their proposal prior to the Agency ever soliciting proposals giving it more time to develop its proposal than any other offeror. Additionally, ESCO-A will have the opportunity to skew the energy audit and recommendations towards its strengths. Therefore, ESCO-A should not be allowed to compete for the guaranteed energy savings contract.

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

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

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

- A. The Agency's project manager (or designee) must open the proposals publicly in the presence of one or more State witnesses at the time and place designated in the request for proposals.
- B. The person opening the proposals should declare the arrival of the time for receipt of proposals, give his/her name and the names of the witnesses, and record this information on a Register of Proposals.
- C. The Agency must prepare a Register of Proposals that identifies the project and includes the name of each offeror and the number of modifications received, if any.
- D. The person opening the proposals and the witness must certify the Register of Proposals in writing as true and accurate.
- E. The Agency may not make the Register of Proposals open to public inspection until after the issuance of an award or notification of intent to award, whichever is earlier.
- F. The Agency must not disclose the contents and the identity of competing offers during the process of opening proposals. If members of the public appear at the opening, the person opening the proposals should state that he/she will conduct the opening of proposals and recording of the names in silence to protect confidential information.

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

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

12.1.13 REJECTION OF PROPOSALS AND CANCELLATION OF SOLICITATION

SC Code Ann § 11-35-1530(9) & 1710

A. Rejection of Individual Proposals – SC Code Ann Regs 19-445.2095(J)

1. The Agency does not need to accept proposals unconditionally without alteration or correction, and to the extent otherwise allowed by law, the State's stated requirements may be clarified after proposals are submitted. The Agency must consider this flexibility in determining whether reasons exist for rejecting all or any part of a proposal.
2. Reasons for rejecting proposals include but are not limited to the following:
 - a. The business that submitted the proposal is non-responsible as determined under Section 11-35-1810;
 - b. The proposal ultimately (after an opportunity, if any is offered, for altering or clarifying the proposal has passed) fails to meet the announced requirements of the State in some material respect; or
 - c. The proposed price is clearly unreasonable.
3. The Agency must document the reasons for cancellation or rejection and make the documentation a part of the procurement file available for public inspection.

B. Rejection of Proposals – Cancellation of Solicitation Prior to Award – SC Code Ann Regs 19-445.2097

1. Unless there is a compelling reason to reject all proposals, the Agency, after receiving and opening proposals, must award a contract.
2. Subject to the provisions of SC Code Ann § 1530, this award must be to the highest ranked responsible offeror.
3. Should the Agency decide to cancel a solicitation after opening proposals but before award, the Agency must determine in writing that:
 - a. inadequate or ambiguous specifications were cited in the solicitation;
 - b. specifications have been revised;
 - c. the supplies, services, information technology, or construction being procured are no longer required;
 - d. the solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
 - e. proposals received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the proposals were requested;
 - f. all otherwise acceptable proposals received are at unreasonable prices;
 - g. the proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
 - h. for other reasons, cancellation is clearly in the best interest of the State.
4. If the determination is due to a change in requirements, the Agency must show in its determination that prior to opening, it made every effort to anticipate changes in requirements.
5. Any determination to cancel the solicitation must be made in good faith (honesty in fact, fair dealing). SC Code Ann § 11-35-30, See In Re: Protest of Wometco Food Services, Inc. SCPD 1991-14.

12.1.14 RANKING OF PROPOSALS**A. Ranking by Individual Committee Members**

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

B. Consensus of Selection Committee

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

C. Selection Committee Report and Recommendation

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

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

- A. If price is an initial evaluation factor in the RFP, the Agency must, award to offeror whose offer the Selection Committee determines to be most advantageous to the Agency, taking into consideration price and the evaluation factors set forth in the RFP.
- B. However, the Agency may in lieu of the forgoing, determine to utilize one of the options provided in SC Code § 11-35-1530(8). (Parts 12.1.16 and 12.1.17)

12.1.16 NEGOTIATIONS AFTER EVALUATION AND RANKING

See Appendix I.

12.1.17 BEST AND FINAL OFFERS (BAFO)

See 12.1.12 above and Appendix I.

12.1.18 AWARD

- A. The Agency Head or its governing body typically makes the final selection decision.
- B. The Agency Head or its governing body may not overturn the Selection Committee's decision unless they determine in writing that there is no rational basis for the Committee's decision, the Committee did not follow the RFP evaluation factors, or the Committee exercised its discretion in an arbitrary or capricious manner.
- C. If the Agency Head or its governing body decides to reject the Committee's selection decision, the Agency must cancel the procurement action and start a new procurement process.
- D. If the Agency rejects the decision of the committee and chooses to cancel the procurement, the agency must comply with the requirements of 12.1.15(B). See SC Code Ann. § 11-35-1710 and Regs. 19-445.2097.
- E. After the Agency Head approves the award, the Project Manager may submit the proposed contract, with supporting documentation, to OSE for review and approval.

12.1.19 NOTICE OF AWARD

- A. **Requirement of Posting** – *SC Code Ann § 11-35-1530(9) & § 1520(10)*
 1. Once the Agency selection is final, it must post an SE-770, Notice of Intent to Award DBx Contract, of a contract to the selected offeror.
 2. The Agency must post the Notice at the time and in the location announced in the RFP.
 3. The Agency must also promptly mail a copy of the notice each responsive offeror.
 4. If an Agency is unable to confirm intent to award on the posting date announced at the RFP, it must post a notice on that date at the specified location stating the new date the Agency will post the Notice (SE-770).

B. OSE Concurrence with Posting - SC Code Ann §§ 11-35-510 and 11-35-830

1. OSE must concur in the posting of Notice of Intent to Award DBx Contract.
2. If not already provided, the Agency must provide OSE with a copy of the proposed Notice of Intent to Award DBx Contract, proposed contract, and Selection Committee report with supporting documentation. The Agency must make this submittal using an SE-760, Request for Concurrence in Posting Notice of Intent to Award DBx Contract.
3. This submittal must be made after the Selection Committee's final selection and completion of negotiations. However, the Agency may submit its request to OSE pending final approval of the proposed contract by the Agency's governing board or Agency Head.
4. OSE will have five working days from the date of receipt of the SE-760 and all required documentation to notify the Agency of any defect in their documentation or, based on that documentation, any apparent defect in their selection procedures. If the Agency does not receive an objection from OSE within five working days from the date OSE receives the SE-760 and all required documentation, OSE will be deemed to have granted approval for the Agency to post the Notice of Award.
5. To expedite this process, the Agency must email the OSE Project Manager, State Engineer and OSE administrative assistant PDF copies of the SE-760 and all required documentation. In lieu of email, the Agency may FAX the SE-760 and required documentation or send them by the US Postal Service. In case of a FAX or delivery by the Postal Service, the Agency only needs to copy the State Engineer and OSE administrative assistant with the Form SE-760.
6. The requirement for a copy to the State Engineer and administrative assistant is to expedite the process in the event the OSE project manager is out of the office.

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

- A. The Agency must wait eleven days after posting the SE-770, Notice of Intent to Award DBx Contract, before it may execute a contract with selected offeror.
- B. During this time, any offeror who disagrees with the Agency's decision may protest the contract award.
 1. If the State Engineer receives such a protest in writing during this period, the Agency may not execute a contract until the matter is resolved unless the Agency in accordance with the Procurement Code requests a lifting of the stay and CPOC grants the request. *See SC Code Ann § 11-35-4210(7).*
 2. If the State Engineer does not receive any protests, the Agency may execute a contract on the eleventh day after posting the SE-770.

12.1.21 SUBMITTING THE CONTRACT TO CONTRACTOR FOR EXECUTION

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

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

12.1.22 REVIEWING CERTIFICATE OF INSURANCE AND PERFORMANCE AND PAYMENT BONDS

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

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

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

- A. The Agency should retain all documents and records the Agency generates or receives related to the procurement at the organization level of generation until the Agency makes the selection decision. The Agency should then collect all records relating to the source selection effort and forward them to the Agency procurement office for inclusion in the official contract file.
- B. At a minimum, the Agency must retain the following records in its procurement file:
 - 1. Request to procure by the RFP method, with OSE authorization;
 - 2. Agency Selection Plan;
 - 3. Plan approval documents with any directed changes;
 - 4. All orders or other documentation establishing membership on the Selection Committee and delegation of duties (e.g. Agency Head);
 - 5. Records of attendance and a summary of proceedings of pre-solicitation and pre-proposal conferences;
 - 6. RFP with amendments;
 - 7. All proposals;
 - 8. The Selection Committee's classification report;
 - 9. The reason for rejecting any offer as not acceptable;
 - 10. Records of discussions with and responses from offerors during the discussion process outlined in Part 12.1.12;
 - 11. Modifications to proposals resulting from discussions;
 - 12. Best and final offers;
 - 13. The Selection Committee report with rankings and recommendations;
 - 14. Agency Heads memorandums and instructions to the Selection Committee and project manager;
 - 15. Agency Head or governing body's decision regarding recommendations for source selection; and
 - 16. Any other data or documents related to the selection process.

12.1.24 NOTIFICATION OF UNSUCCESSFUL OFFERORS

- A. **Prior to Notice of Award:**
 - 1. During the selection process, the Agency must provide prompt notification of its selection decision to all unsuccessful offerors.
 - 2. When the Selection Committee determines that an offeror's proposal is not acceptable, the Agency must notify the offeror of the basis of the determination in general terms and advise the offeror that it will not consider a revision to the proposal.
 - 3. Such notice must **not** be in the form of a blanket notice to all offerors but must be an individual notice tailored to each offeror.
 - 4. Each individual notice must not apprise the offeror of the status of any other offeror's proposal.
- B. **After Notice of Award:**
 - 1. When the Agency awards a contract for construction on a basis other than price alone, the Agency must furnish the basis for the selection decision and contract award to unsuccessful offerors upon their written request.
 - 2. The Agency should provide unsuccessful offerors with a debriefing upon request.

CHAPTER 12
DESIGN-BUILD, DESIGN-BUILD-OPERATE-MAINTAIN &
DESIGN-BUILD- FINANCE-OPERATE-MAINTAIN
SUB-CHAPTER 12.2
ADMINISTERING THE DESIGN-BUILD CONTRACT

TO BE DEVELOPED

CHAPTER 13

AGENCY CERTIFICATION FOR CONSTRUCTION PROCUREMENT AND CERTIFICATION FOR CODE REVIEW

SUB-CHAPTER 13.1

CERTIFICATION FOR CONSTRUCTION PROCUREMENT

13.1.1 RELATED STATUTORY AUTHORITY

- A. SC Code § 11-35-540 permits the SFAA to promulgate regulations, to approve agencies' internal operational procurement procedures, and to audit and monitor agencies' procurement procedures.
- B. SC Code § 11-35-845 permits agencies with total management capabilities to oversee the administration of permanent improvement projects with the Office of State Engineer serving as an audit function.
- C. SC Code § 11-35-1550 authorizes any agency to conduct its own procurement of \$50,000 or less in actual or potential value under its own authority in accordance with the procurement code.
- D. SC Code § 11-35-1210 permits the SFAA to certify agencies to make direct procurements not under term contract and within assigned dollar limits.
- E. SC Code § 11-35-1220 permits the Chief Procurement Officers to require that agencies report all public procurements on forms they prescribe.
- F. SC Code § 11-35-1230 requires the office designated by the SFAA for that purpose to audit and provide fiscal reporting.
- G. SC Code § 11-35-3220 requires the State Engineer to approve all design professional selections except those procured in response to emergency or sole source declarations or for contracts of \$25,000 or less.
- H. SC Regulation 19-445.2015 defines unauthorized procurements and the process for terminating or ratifying such procurements.

13.1.2 DELEGATION OF CONSTRUCTION PROCUREMENT AUTHORITY

- A. All Agencies have a basic level of certification of \$50,000, permitting them to procure construction services valued at \$50,000 or less under their own authority.
- B. The Materials Management Officer may recommend to the SFAA that an Agency receive the authority to make direct procurements above the basic level of \$50,000. Authority to authorize change orders within certain limits may be a part of this recommendation.
- C. For construction procurement certification in excess of \$50,000, the Materials Management Office evaluates the Agency for knowledge and performance related to administration of the Procurement Code and the General Conditions of the Construction Contract.
- D. Construction procurements within the Agency's construction procurement certification are the sole responsibility of the Agency.
- E. All procurement activities under an Agency's certification must adhere to all laws and regulations governing construction procurement and to the requirements of this Manual.
- F. Certified Agencies may only procure construction using OSE approved contract forms. OSE must monitor and approve construction procurements exceeding the Agency construction certification.
- G. OSE and MMO may perform audits to monitor compliance with these standards.

13.1.3 CERTIFICATION REQUEST PROCEDURES

A. Request for Certification Exceeding Current Certification

- 1. Agencies desiring construction procurement certification in excess of their current certification must submit a written request to the Materials Management Officer. The Agency should submit their request well in advance of expiration of their current certification.
- 2. The request must contain the following information:
 - a. The proposed certification level;
 - b. The Agency's building program over the last five years;
 - c. The Agency's building program projected for the next five years;

- d. A list (including the dollar value) of initial design and construction procurements and the contract amendments and change orders that the proposed increased certification level would have allowed on projects constructed during the past five (5) years;
 - e. The individual in responsible charge of construction projects
 - f. The Agency's organization and staffing (current and proposed, if different) for the management of construction projects and the support available to the staff; and
 - g. The resumes of both procurement and technical staff members showing relevant experience and current registrations, licenses, and certifications.
3. The individual in responsible charge of construction projects must have at least one of the following qualifications:
- a. South Carolina licensed Architect or Professional Engineer with significant experience in building design and construction; or
 - b. Other building construction experience acceptable to the OSE.

B. Evaluation of the Request for Increased Certification

Audit and Certification will audit the Agency's internal procurement practices and OSE will review the Agency's construction project execution practices and the two will make recommendations based on the following criteria:

- 1. Demonstrated need for the certification;
- 2. Estimated number of additional construction-related procurements that the requested certification level would allow;
- 3. Past audit reports;
- 4. Evaluation of the Agency's adherence to the procurement code, related regulations, and this
- 5. Manual with an emphasis on competitive procurement methods; and
- 6. Qualifications of the staff assigned to the procurement process.

13.1.4 AUDIT AND RECORD RETENTION REQUIREMENTS

- A. For Agencies procuring construction related services within the certification limits granted by the SFAA, both Audit & Certification and OSE perform an audit function.
- B. The Agency must make all procurement records available to the Attorney General, OSE, and Audit & Certification.
- C. Agencies must retain and dispose of procurement records on all projects in accordance with guidelines approved by the Department of Archives and History.

13.1.5 IN-HOUSE CONSTRUCTION PROJECTS

- A. In-house construction projects are projects where the Agency uses its own forces to supply all labor and the Agency does not use any outside contractor or subcontractor. All in-house projects must comply with the cost limits and licensing requirements of the SC Contractors' Licensing Board.
- B. The Agency must use the actual cost of both labor and materials to determine if the project exceeds the Agency construction certification and to determine the review and approval requirements by OSE.
- C. If individual procurements of construction materials or equipment exceed the Agency goods and services certification, the Agency must make those procurements through the State Procurement Office or through a state contract. The Agency may obtain further interpretation on these requirements from the State Procurement Office.

13.1.6 CERTIFICATION VIOLATIONS

Any procurement that violates an Agency's certification limits is an unauthorized procurement that the Agency must terminate or ratify in accordance with SC Regulation 19-445.2015.

CHAPTER 13

AGENCY CERTIFICATION FOR CONSTRUCTION PROCUREMENT AND CERTIFICATION FOR CODE REVIEW

SUB-CHAPTER 13.2

CERTIFICATION FOR BUILDING CODE REVIEW

13.2.1 RELATED STATUTORY AUTHORITY

SC Code § 10-1-180 establishes the State Engineer as the Building Official for state construction.

13.2.2 DELEGATION OF BUILDING CODE ENFORCEMENT AUTHORITY

A. General

1. The State Engineer functions as the Building Official for state construction, including the enforcement of the codes and standards listed in Chapter 5.
2. The International Building Code (IBC) authorizes the Building Official to delegate specific duties and responsibilities for enforcement of the provisions of the IBC to others and to establish policies and procedures related to this delegation of authority.
3. An Agency may request authority to self-perform reviews of the Agency's construction project drawings and specifications for conformance with the Building Code and regulations and standards set forth in Chapter 5 this Manual.
4. An Agency may also request authority to self-perform code inspections of construction for compliance with those same standards.
5. OSE will consider the Agency's project workload and the availability of sufficient and qualified employees that can be dedicated to the review and/or inspection process in evaluating such requests.
6. Agencies acting within their level(s) of building code review and/or inspection authority exercise the authority of the State Engineer, and accept the responsibilities implicit in that authority. Agencies should carefully review Chapter 1 of the International Building Code for more information regarding the duties, authority, and responsibilities of a building official.

B. Code Review Delegation Request

Agencies must support their requests for authority to self-perform building code reviews of project drawings and specifications and/or building code inspections of construction with the following information:

1. The training and experience of the personnel that will perform the reviews showing they are sufficiently trained and experienced in the application of the building codes to design and construction;
2. Measures that the Agency will take to ensure that the in-house code reviewers will be allowed to apply and enforce the requirements of the building codes without influence or pressure from their supervisors or anyone in authority over them; and
3. A list of all books, codes, and manuals in the Agency's reference library showing that the code review staff have ready access to the applicable codes and standards listed in Chapter 5 of this Manual.

C. Employee in Responsible Charge of Code Compliance

The employee that the Agency will place in responsible charge of building code compliance must be:

1. A South Carolina registered Architect with significant experience in building design and construction;
2. A South Carolina licensed Professional Engineer with significant experience in building design and construction;
3. An International Code Council Certified Building Official; or
4. An International Code Council Certified Building Code Official.

D. Qualifications of Staff

For comprehensive review and/or inspection authority, the Agency's building code review staff, including the individual in responsible charge, should collectively possess the following qualifications:

1. SC registered Architect or ICC certified Building Code Official;
2. SC licensed professional Civil/Structural Engineer or ICC certified Building Code Official;
3. SC licensed professional Mechanical Engineer or both an ICC certified Mechanical Code Official and Plumbing Code Official;
4. SC licensed Electrical Engineer, or ICC certified Electrical Code Official.

E. OSE Review

1. OSE will review the Agency's construction project execution practices and make delegation recommendations based on the following criteria:
 - a. Demonstrated need for the certification;
 - b. Evaluation of compliance with all of the applicable codes as outlined in Chapter 5; and
 - c. Qualifications of the staff assigned to the code review and enforcement process.
2. If after review of the Agency's request for delegated code review and/or inspection authority, OSE agrees to do so, OSE will send the Agency's lead reviewer a letter setting the extent of the delegation of authority.
3. In no event will delegation be for longer than two years. The review staff's performance in this two-year period will be a major factor in determining whether to delegate code review and/or inspection authority for an additional two years.
4. Failure to adequately perform will justify OSE in revoking delegated code review and/or inspection authority.