CHAPTER 13
AGENCY CERTIFICATION FOR CONSTRUCTION PROCUREMENT AND DELEGATED CODE REVIEW

13.1. RELATED STATUTORY AUTHORITY

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

13.1.2 SC Code § 11-35-540 permits SFAA to promulgate regulations, to approve Agencies' internal operational procurement procedures, and to audit and monitor Agencies' procurement procedures.

13.1.3 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.

13.1.4 SC Code § 11-35-1210 permits SFAA to certify Agencies to make direct procurements not under term contract and within assigned dollar limits.

13.1.5 SC Code § 11-35-1220 permits the Chief Procurement Officers to require that Agencies report all public procurements on forms they prescribe.

13.1.6 SC Code § 11-35-1230 requires the office designated by SFAA for that purpose to audit and provide fiscal reporting.

13.1.7 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.

13.1.8 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 $50,000 or less.

13.1.9 SC Regulation 19-445.2015 defines unauthorized procurements and the process for terminating or ratifying such procurements.

13.2 DELEGATION OF CONSTRUCTION PROCUREMENT AUTHORITY

13.2.1 All Agencies have a basic level of authority of $50,000, permitting them to procure construction services valued at $50,000 or less on their own.

13.2.2 The Materials Management Officer may recommend to SFAA that an Agency receive certification to make direct procurements above the basic level of $50,000. Certification to approve Change Orders within certain limits may be a part of this recommendation.

13.2.3 For construction procurement certification in excess of $50,000, the Materials Management Officer evaluates the Agency for knowledge and performance related to administration of the Procurement Code and the General Conditions of the Construction Contract.

13.2.4 Construction procurements within the Agency's construction procurement certification are the sole responsibility of the Agency. This includes the issuance of building permits, the provision of inspection services, and the issuance of certificates of occupancy.

13.2.5 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.

13.2.6 Certified Agencies may only procure construction using OSE-approved contract forms.

13.2.7 OSE must monitor and approve construction procurements exceeding the Agency construction certification, including Task Order Contract task orders.

13.2.8 OSE and MMO may perform audits to monitor compliance with these standards.

13.3 CERTIFICATION REQUEST PROCEDURES

13.3.1 Request for Certification Exceeding Current Certification

A. 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.

B. The request must contain the following information:

1. The proposed certification level.

2. The Agency's building program over the last five years.

3. The Agency's building program projected for the next five years.

4. 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.
5. The qualifications of the individual in responsible charge of construction projects.
6. 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
7. The resumes of both procurement and technical staff members showing relevant experience and current registrations, licenses, and certifications.

13.3.2 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:

A. Demonstrated need for the certification.

B. Estimated number of additional construction-related procurements that the requested certification level would allow.

C. Past audit reports.

D. Evaluation of the Agency's adherence to the procurement code, related regulations, and this Manual, with an emphasis on competitive procurement methods; and

E. Qualifications of the staff assigned to the procurement process.

13.4 AUDIT AND RECORD RETENTION REQUIREMENTS

13.4.1 For Agencies procuring construction related services within the certification limits granted by SFAA, both Audit & Certification and OSE perform an audit function.

13.4.2 The Agency must make all procurement records available to the Attorney General, OSE, and Audit & Certification.

13.4.3 Agencies must retain and dispose of procurement records on all projects in accordance with guidelines approved by the Department of Archives and History.

13.5 IN-HOUSE CONSTRUCTION PROJECTS

13.5.1 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.

13.5.2 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.

13.5.3 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.

13.6 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.

13.7 DELEGATION OF BUILDING CODE ENFORCEMENT AUTHORITY

13.7.1 General

A. The State Engineer functions as the Building Official for state construction, including the enforcement of the codes and standards listed in Chapter 5.

B. 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.

C. An Agency may request authority to self-perform reviews of the Agency's construction project drawings and specifications for conformance with the IBC and regulations and standards set forth in Chapter 5.

D. An Agency may also request authority to self-perform building code inspections of construction for compliance with those same standards.

E. 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.

F. Agencies acting within their level(s) of building code review exercise the authority of the State Engineer and accept the responsibilities implicit in that authority. Agencies should carefully review Chapter 1 of the IBC for more information regarding the duties, authority, and responsibilities of a Building Official.

13.7.2 Building Code Review Delegation Request

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

A. 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 for design and construction.

B. Measures that the Agency will take to ensure that the in-house building 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

C. A list of all books, codes, and manuals in the Agency's reference library showing that the building code review staff have ready access to the applicable codes and standards listed in Chapter 5.

13.7.3 Agency Qualifications for Building Code Review Delegation Above $100,000

A. Employee in Responsible Charge of Code Compliance: The employee that the Agency will place in responsible charge of building code compliance must be one of the following:

1. An SC licensed Architect with significant experience in building design and construction.

2. An SC licensed Professional Engineer with significant experience in building design and construction.

3. An International Code Council (ICC) Certified Building Official (CBO); or

4. An International Code Council (ICC) Master Code Professional (MCP).

B. Qualifications of Staff: Members of the Agency's building code review staff should possess one or more of the following qualifications as appropriate to the level of certification:

1. SC licensed Architect or ICC certified CBO or MCP.

2. SC licensed Professional Civil/Structural Engineer or ICC certified CBO or MCP.

3. SC licensed Professional Mechanical Engineer or both an ICC certified Mechanical Code Specialist and Plumbing Code Specialist.

4. SC licensed Professional Electrical Engineer, or ICC certified Electrical Code Specialist.

13.7.4 OSE Review

A. OSE will review the Agency's construction project execution practices and make delegation recommendations based on the following criteria:

1. Demonstrated need for the certification.

2. Evaluation of compliance with all of the applicable codes as outlined in Chapter 5; and

3. Qualifications of the staff assigned to the building code review and enforcement process.

B. If after review of the Agency's request for delegated building code review authority, OSE agrees to do so, OSE will send the Agency's lead reviewer a letter setting the extent of the delegation of authority.

C. The delegation will be for two years. The review staff's performance during this two-year period will be a major factor in determining whether to delegate building code review authority for an additional two years.

D. Failure to adequately perform will justify OSE in revoking delegated building code review authority.