CHAPTER 8
MISCELLANEOUS PROCUREMENTS

8.1 RELATED STATUTORY AUTHORITY

8.1.1 SC Code § 11-35-540 permits 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 establishes procedures for small purchases.
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 and requires public notice of such 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 and requires public notice of such procurement.
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 procedures for sole source procurements.
8.1.8 SC Regulation 19-445.2110 sets forth procedures for emergency procurements.
8.1.9 SC Regulation 19-445.2140 A (1) provides the definition for Brand Name Specification. (Brand Name Only)
8.1.10 SC Regulation 19-445.2140 A (2) provides the definition for Brand Name or Equal Specification.

8.2 TYPES OF MISCELLANEOUS PROCUREMENTS

8.2.1 Small Purchases
8.2.2 Sole Source Procurements
8.2.3 Emergency Procurements
8.2.4 Brand Name Only and Brand Name or Equal Specifications

8.3 SMALL PURCHASES OF CONSTRUCTION

8.3.1 **Protest Rights**: Protest rights do not apply to procurements of $50,000 or less. Procurements over this amount that are awarded under the Small Purchase procedures set forth in this section are protestable; however, they immediately go into effect upon posting of the Notice of Award (SE-375).

8.3.2 **Limits for Small Purchases**:

A. Small purchases are limited to an amount of $100,000 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. The Agency may waive bonding requirements for construction contracts under $50,000 if they have protected the interests of the State.

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 $10,000 OR LESS:

1. Agency may make small purchases with a total cost of $10,000 or less without competitive quotes.

2. The Agency should distribute these purchases equitably among qualified suppliers. When practical, the Agency must solicit quotes from other suppliers before giving the previous supplier a repeat order.

3. The Agency should make the purchase via their purchase requisition form.

4. The Agency Procurement Officer or their designee must review the purchase requisition and annotate it with the words "Price is fair and reasonable" and sign it if they are in agreement.

5. The Agency is only required to verify the reasonableness of the price when the Agency Procurement Officer 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 $10,000 BUT LESS THAN $100,000:

1. For construction, the Agency may request written quotes from a minimum of three (3) qualified sources and receive at least three (3) bona fide responsive and responsible quotes; or, the Agency may provide adequate public notice in South Carolina Business Opportunities (SCBO) and receive at least one responsive and responsible quote.

2. The advertisement for written quotes in SCBO should be listed under the “Minor Construction” section.

3. The Agency can receive quotes either by delivery (mail, delivery service, or in person), or by the bidder emailing the Quote Form (SE-331) to the Agency Project Coordinator.
4. The Agency may open quotes any time after the Quote Due Date & Time established in the SE-311. A public opening is not required; however, the Agency should create a Quote Tabulation for information.
5. 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.)
6. These contracts are immediately effective upon posting the SE-375 and the Agency may direct the Contractor to start work even though the time to protest the award has not passed.
7. The Agency should make the purchase using their purchase requisition form. A copy of the purchase requisition form, with a copy of the written solicitation and submitted quotes, shall be placed in the Agency procurement file.

8.3.4 Requesting Quotes and Contract Award:

A. The Agency should use the SE-311 as the written request for quotes, whether soliciting quotes directly from Contractors or advertising in SCBO.

B. The Agency should create project documents to define the scope of the work, including the Table of Contents – Minor Construction in Appendix B.3 that lists the required forms.

C. Projects Exceeding Agency's Basic Authorization of $50,000.

1. The Agency must choose one of the following methods to proceed:
   - **a.** Advertising in SCBO: The Agency should submit the completed SE-311 and project documents to the OSE Project Manager for review and approval. The OSE Project Manager will send the approved SE-311 to SCBO for advertisement. The Agency must include the signed SE-311 in the project documents.
   - **b.** Soliciting Quotes directly from three (3) or more Contractors: The Agency should submit the completed SE-311 and project documents to the OSE Project Manager for review and approval. The OSE Project Manager will approve the SE-311and the Agency must include the signed SE-311 in the project documents and distribute them to qualified Contractors.
2. Posting Notice of Award: After determining the lowest responsive and responsible source, the Agency should send the SE-375 with required back-up documents to the OSE Project Manager for approval. The Agency must post the approved copy of the SE-375 at the location indicated in the Invitation. The Agency must also send the SE-375 and the Quote Tabulation to all Offerors the same day it is posted.
   - **a.** No Quotes Received: If the Agency does not receive any quotes prior to Quote Due Date and Time, they shall close out the procurement as follows:
     1) Submit an SE-375 to OSE with "No Quotes Received" shown as the Name of Offeror.
     2) After OSE approves the SE-375, post the form at the location indicated in the Invitation.
   - **b.** No Contract to Be Awarded: If the Agency does not intend to award a contract to any of the Offerors, they shall close out the procurement as follows:
     1) Submit an SE-375 to OSE with "No Contract to be Awarded" shown as the Name of Offeror and indicate the reason under "Remarks". Attach the Quote Tabulation to the SE-375.
     2) After OSE approves the SE-375, post the form at the location indicated in the Invitation and send it to all Offerors the same day it is posted.
3. Before the Contractor begins work, the Agency must complete the Building/Construction Permit (SE-580), and submit it to OSE along with the Inspection/Material Testing Order (SE-955), the Inspection/Material Testing Order Negotiation Worksheet (SE-955A), and a signed copy of the SE-962. OSE will approve the SE-580 and the Agency will provide a copy to the Contractor.

D. Projects Within the Agency's Construction Contract Certification.

1. The Agency must choose one of the following methods:
   - **a.** Advertising in SCBO: The Agency must complete the ad online at https://scbo.sc.gov/advertise and provide a link to a completed pdf of the SE-311, page 1, in the Description of Project section in the SCBO ad.
   - **b.** Soliciting Quotes directly from three (3) or more Contractors: The Agency must distribute the completed SE-311 and the project documents to qualified Contractors.

2. Posting Notice of Award: After determining the lowest responsive and responsible source, the Agency will post the SE-375 at the location indicated in the Invitation and send a copy of the SE-375 and the Quote Tabulation electronically to all those who submitted a quote.
   a. No Quotes Received: If the Agency does not receive any quotes prior to Quote Due Date and Time, they shall close out the procurement by posting an SE-375 with "No Quotes Received" shown as the Name of Offeror.
   b. No Contract to Be Awarded: If the Agency does not intend to award a contract to any of the Offerors, they shall close out the procurement by posting the SE-375 with "No Contract to be Awarded" shown as the Name of Offeror and indicate the reason under "Remarks". Attach the Quote Tabulation to the SE-375 and send them to all Offerors.
3. Before the Contractor begins work, the Agency must complete an SE-580 and provide a copy to the Contractor. If required, the SE-962 shall be signed by all parties and a copy provided to all parties.

E. The Agency should complete and sign the Minor Construction Contract (SE-377) and send it to the Contractor, with a cover letter, requiring the Contract be executed and returned with a copy of the bonds and certificate(s) of insurance within seven (7) days.

F. Upon receipt of the executed contract, Performance and Payment Bonds, each in an amount of 100% of the Contract Price, and the required certificate(s) of insurance, the Agency shall complete and submit to the Contractor a copy of the Notice to Proceed (SE-391). The SE-391 will establish the Date Commencement, the Date of Substantial Completion, and Liquidated Damages (if any).

8.3.5 Agencies should be wary of using Small Purchase procedures if the predicted award price is greater than $90,000. In the event the lowest responsive and responsible bid exceeds the $100,000 small purchase limit, the Agency may 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. Sole source procurements are rare, please consult OSE to assist in the determination if a procurement is a Sole Source or Brand Name Only.

B. The Chief Procurement Officer, the head of the Agency or their designee above the level of the Agency's procurement officer, must authorize the sole source procurement.

C. The Agency must document, utilizing the Justification for Sole Source Procurement (MMO #102), its determination that there is only one source for the service or construction and its authorization for the purchase.

D. The Agency must place a copy of its written determination in its procurement file.

E. The Agency's determination is subject to protest.

F. Sole Source Procurements will be audited by Audit and Certification.

8.4.2 Advertising Sole Source Procurements

Except for contracts with a total potential value of $50,000 or less, adequate public notice of the intent to award without competition must be posted in SCBO as follows:

A. Notice of Intent to Sole Source a Contract with a total potential value greater than $50,000 must be advertised in SCBO for at least five (5) business days before entering a contract.

B. Notice of Intent to Sole source a Contract with a total potential value greater than $250,000 must be advertised in SCBO for at least ten (10) business days before entering a contract.

8.4.3 OSE Code Review:

A. For projects that exceed an Agency's construction contract certification, OSE will review the project, and any work associated with a Sole Source Justification.

B. OSE WILL NOT REVIEW OR APPROVE the Agency's determination for a sole source procurement.

8.4.4 Basis and Procedure for Sole Source Procurements:

See SC Code § 11-35-1560 and SC Regulation 19-445.2105 for the basis of making a sole source procurement public notice and the requirements for the determination that a sole source procurement is necessary.

8.4.5 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 greater than $50,000.

B. The Contractor must provide the standard contractor's insurance policies.

C. See Chapter 6 for detailed information concerning bond and insurance requirements.

8.4.6 Change Orders or Amendments to Sole Source Procurements:

A. The Agency may only approve 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 approves any change orders, they must submit an approved copy to OSE marked "Change Order to Sole Source Procurement – For Information Purposes Only."

8.4.7 Reporting Sole Source Procurements:

The Agency must submit a quarterly report of all sole source procurements to the Materials Management Office (MMO) as directed by Audit and Certification at the following link: https://reporting.procurement.sc.gov.

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.

B. The Chief Procurement Officer, the head of the Agency or their designee must make or authorize an emergency procurement. The Agency may make an emergency procurement only when there is an immediate threat to public health, welfare, critical economy and efficiency, or safety.

C. The Agency must document, utilizing the Justification for Emergency Procurement (MMO #103), the nature of the emergency condition and the basis for the selection of the particular contractor. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation of the decision..

D. The Agency must place a copy of its determination in its procurement files.

E. The Agency's determination to proceed with an emergency procurement is subject to protest.

F. Emergency Procurements will be audited by Audit and Certification.

8.5.2 Advertising Emergency Procurements

Except for contracts with a total potential value of $50,000 or less, a notice of the award must be posted in South Carolina Business Opportunities for a minimum of five (5) business days.

8.5.3 OSE Code Review

A. For projects that exceed an Agency's construction contract certification, OSE will review the project and any work associated with an Emergency Justification. OSE will expedite this review.

B. OSE WILL NOT REVIEW OR APPROVE the Agency's determination for an emergency procurement.

8.5.4 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 SFAA immediately for approval.

8.5.5 Basis and Procedure for Emergency Procurement

See SC Code § 11-35-1570 and SC Regulation 19-445.2110 for the requirements of an emergency purchase public notice 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.

8.5.6 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 Procurements

A. The Agency may only approve 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 use Change Orders to add additional procurements that are not necessary to respond to the emergency.

C. If the Agency approves any Change Orders, they must submit them to OSE marked "Change Order to Emergency Procurement - For Information Purposes Only."

8.5.8 Reporting Emergency Procurements

The Agency must submit a quarterly report of all emergency procurements to the Materials Management Office (MMO) as directed by Audit and Certification at the following link: https://reporting.procurement.sc.gov .

8.6 BRAND NAME ONLY AND BRAND NAME OR EQUAL SPECIFICATIONS

8.6.1 Agency's Authorization of Brand Name Only Specification

A. The Agency must determine for itself that only one brand of a required item for a construction project exists. The Agency is responsible for justification and authorization of its purchase.

B. The Agency's Procurement Officer must document its determination in writing that only one brand meets the requirements for a portion of a construction project, and that brand is available from multiple potential contractors.

C. The Agency must submit justification for construction-related brand name only specifications to OSE for review on form MMO/OSE-139 and place a copy of it in their procurement file.

D. The Agency must submit a separate form MMO/OSE 139 for each brand name only specification; however, multiple products by the same manufacturer can be included on the same form.

E. The Agency's determination is subject to protest.

F. Brand Name Only Specifications will be audited by Audit and Certification.

G. If a brand name only specification is added to a contract by change order, contract modification, or contract negotiation per a request or directive by the Agency and is part of a construction project that exceeds the Agency Construction Contract Certification, the Agency must send a copy of the written determination to the OSE Project Manager.

8.6.2 Agency's Authorization of Brand Name or Equal Specification

A. Specifications that list a construction item by brand name "or equal" shall include a description of the particular design, functional, or performance characteristics which are required.

B. Where a brand name or equal specification is used in the Bidding Documents, the documents shall contain explanatory language that the use of a brand name and model number is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit competition.