



The Purchasing Department

PROCUREMENT CODE

TABLE OF CONTENTS

ARTICLE I - GENERAL PROVISIONS	4
A - Purpose and Application.....	4
1-101 Purpose.....	4
1-102 Application.....	4
1-103 Specific Repealer.....	4
1-104 Effective Date.....	4
B - Definitions	4
1-201 Definitions.....	4
C - Public Access to Information.....	8
1-301 Public Access to Procurement Information.....	8
D - Compliance with Federal Requirements.....	9
1-401 Compliance with Federal Requirements	9
ARTICLE II - PROCUREMENT ORGANIZATION.....	10
A - Responsibility for Procurement Regulation	10
2-101 Establishment, Appointment and Tenure.....	10
2-102 Authority and Duties	10
2-103 Delegation of Authority	10
2-104 Authorizations and Signatures	11
B - Organization of Public Procurement.....	11
2-201 Centralization of Procurement Authority.....	11
2-202 Methods of Selection.....	11
2-203 Authority to Contract for Certain Services and Other Exemptions to Public Procurement	11
2-204 Auditing.....	12
C - Future Regulations	12
2-301 Future Regulations	12
2-302 Recertification	12
ARTICLE III – TRADITIONAL SOURCE SELECTION AND CONTRACT FORMATION	13
A - Methods of Source Selection	13
3-101 Competitive Sealed Bidding.....	13
3-102 Competitive Sealed Proposals.....	16
3-103 Architect-Engineer, Construction Management and Land Surveying Services	17
B – Cancellation and/or Rejection of Procurement	20
3-201 Cancellation of Invitation for Bids or Requests for Proposals.....	20
3-202 Rejection of Invitation for Bids or Requests for Proposals.....	21
3-203 Rejection of Individual Bids or Proposals	22
C - Qualifications and Duties.....	23
3-301 Responsibility of Bidders and Offerors.....	23

3-302 Prequalification	25
3-303 Bid/Proposal Security.....	26
3-304 Contract Performance and Payment Bonds.....	27
3-305 Bond Forms and Copies	27
ARTICLE IV – ALTERNATIVE SOURCE SELECTION AND CONTRACT FORMATION	29
4-101 Competitive Fixed Price Bidding.....	29
4-102 Competitive Best Value Bidding	29
4-103 Competitive On-line Bidding.....	30
4-104 Construction Manager At Risk.....	31
4-105 Procurements at Auction	32
ARTICLE V – SPECIAL PROCUREMENT METHODS	33
5-101 Small Purchases and Other Simplified Purchasing Procedures	33
5-102 Sole Source Procurement	34
5-103 Emergency Procurement	34
5-104 Public Contract Price Procurement	35
5-105 Authority for Leases.....	35
5-106 Intergovernmental Relations	35
ARTICLE VI – TYPES OF CONTRACTS AND CONTRACTUAL ADMINISTRATION.....	37
A – Types of Contracts	37
6-101 Multi-Term Contract	37
6-102 Indefinite Delivery Contract.....	37
B - Inspections, Audits, and Determinations	38
6-201 Right to Inspect Plant	38
6-202 Right to Audit Records.....	38
6-203 Approval of Accounting System	39
6-204 Finality of Determinations	39
C - Reports and Records	39
6-301 Reporting of Anti-Competitive Practices.....	39
6-302 Procurement Records	39
ARTICLE VII - SALE AND DISPOSAL OF SURPLUS PROPERTY	41
7-101 Surplus Property Determination.....	41
7-102 Sale of Real Property.....	41
7-103 Sale of Personal Property	41
7-104 Sale or Disposal of Junk Personal Property	41
7-105 Trade-in Sales.....	41
ARTICLE VIII – REMEDIES RESOLVING PROTEST	43
8-101 Protestor Rights	43
8-102 Authority to Debar or Suspend.....	45

ARTICLE I - GENERAL PROVISIONS

A - Purpose and Application

1-101 Purpose

This Procurement Code is to provide for equitable treatment in purchasing, to maximize purchasing value and to provide safeguards for maintaining quality and integrity in compliance with S. C. Code Ann. §11-35-50.

1-102 Application

This Procurement Code applies to contracts for the procurement of supplies, services, and construction entered into by the Agency after the effective date of this Procurement Code. It shall apply to every expenditure of public funds irrespective of their source. Nothing in this Procurement Code shall prevent the Agency from complying with the terms and conditions of any grant, gift, or bequest which are otherwise consistent with law.

1-103 Specific Repealer

All previously issued Resolutions, Rules, Regulations or versions of the Procurement code pertaining to public procurement for the Agency are repealed.

1-104 Effective Date

This Procurement Code shall become effective on May 23rd, 2016.

B - Definitions

1-201 Definitions The following words, unless the context, custom or intent clearly indicates otherwise, shall mean:

- (1) "**Architect-engineer and land surveying services**" are those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture, and interior design pertaining to construction, as defined by the laws of the State of South Carolina, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.

ARTICLE I

- (2) **"Agency"** means Renewable Water Resources.
- (3) **"Business"** means any corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture or any other legal entity.
- (4) **"Change Order"** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.
- (5) **"Construction"** means the process of building, altering, repairing, remodeling, improving or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
- (6) **"Construction manager agent"** means a business that has been awarded a separate contract with the Agency to provide construction management services but not construction.
- (7) **"Construction manager at-risk"** means a business that has been awarded a separate contract with the governmental body to provide both construction management services and construction using the construction management at-risk project delivery method. A contract with a construction manager at-risk may be executed before completion of design.
- (8) **"Construction Manager At Risk (CM-AT-Risk) Contract"** means a contract under which a Construction Manager provides services for a fixed fee or fee schedule. Such a contract provides that prior to commencing construction the Construction Manager may be awarded a Guaranteed Maximum Price Contract.
- (9) **"Construction Management Services"** means those professional services associated with a system in which the Agency directly contracts with a professional Construction Manager to provide that group of management activities required to plan, schedule, coordinate, and manage the construction plan of a project in a manner that contributes to the control of time, cost, and quality of construction as specified in the construction management contract.
- (10) **"Contract"** means all types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.
- (11) **"Contract modification"** means a written order signed by the Chief Executive Officer or his designee directing the contractor to make changes in their services or construction.
- (12) **"Contractor"** means any person or business entity having a contract with the Agency.
- (13) **"Cooperative Purchasing"** Procurement conducted by, or on behalf of, more than one Public Procurement Unit.
- (14) **"Data"** means recorded information, regardless of form.
- (15) **"Days"** means business days.

ARTICLE I

- (16) **"Debarment"** means the disqualification of a person or business entity to receive invitations for bids, or requests for proposals, or the award of a contract by the Agency, for a specified period of time.
- (17) **"Designee"** means a duly authorized representative of the Chief Executive Officer with formal responsibilities under the Procurement Code.
- (18) **"Electronic"** Anything electrical, digital, magnetic, optical, electromagnetic, biometric, or any other technology that is similar to these technologies (cf. SC Code §26-5-30).
- (19) **"Electronic Record"** A record generated, communicated, received, or stored by electronic means (cf. SC Code §26-5-30).
- (20) **"Electronic Signature"** Any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the party using it to have the same force and effect as a manual signature (cf. SC Code §26-5-30).
- (21) **"Employee"** means an individual drawing compensation from the Agency, whether elected or not, and any nonsalaried individual performing personal services for the Agency but not independent contractors.
- (22) **"Grant"** means the furnishing of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.
- (23) **"Guaranteed Maximum Price (GMP) Contract"** means a cost-reimbursement contract wherein the contractor shall be paid a fee based on a fixed rate or amount or on a fixed formula, but where the total contract amount, including the contractor's fee and general conditions, will not exceed a guaranteed maximum amount. The GMP Contract shall include all cost for the construction and completion of the project, including all mobilization, general conditions, profit, and overhead cost of any nature.
- (24) **"Invitation for Bids"** means a written or published solicitation issued by the Purchasing Manager for bids to contract for the procurement or disposal of supplies, services or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.
- (25) **"May"** denotes the permissive.
- (26) **"Person"** means any business, individual, union, committee, club, other organization, or group of individuals.
- (27) **"Procurement"** means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

ARTICLE I

- (28) **"Purchasing Manager"** means an individual designated by the Chief Executive Officer to serve as the procurement official for the Agency.
- (29) **"Real property"** means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.
- (30) **"Request for Bid (RFB)"** means written or published solicitation issued by the Purchasing Manager for bids to provide supplies or services, which ordinarily result in the award of the contract to the lowest responsive and responsible bidder.
- (31) **"Request for Qualification (RFQ)"** means a written or published solicitation issued by the Purchasing Manager for qualifications to provide professional services, which ordinarily result in the award of a negotiated contract made on the basis of evaluation factors stated in the RFQ.
- (32) **"Request for Proposals (RFP)"** means a written or published solicitation issued by the Purchasing Manager for proposals to provide supplies or services, which ordinarily result in the award of the contract to the responsible offeror making the proposal determined to be most advantageous to the Agency. The award of the contract must be made on the basis of evaluation factors which must be stated in the RFP, and which must include but not be controlled alone by the factor of price proposed to be charged.
- (33) **"Request for Quote (RFQ)"** means an inquiry by the Agency on the possibility to procure supplies or services per prior developed specifications.
- (34) **"Responsible Bidder"** A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.
- (35) **"Responsive Bidder"** A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.
- (36) **"Service(s)"** means the furnishing of labor, time, or effort by a contractor, not required to deliver a specific end product, other than reports which are merely incidental to required performance. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements or services as defined in Section 1-201(19).
- (37) **"Shall"** denotes the imperative.
- (38) **"Specification"** means any technical or purchase description or other description of the physical or functional characteristics, or of the nature of a supply, service or construction item. It may also include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.
- (39) **"Subcontractor"** means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with the Agency.

ARTICLE I

- (40) **"Supplies"** means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property but not real property or an interest in real property other than a lease hold.
- (41) **"Suspension"** means the disqualification of a person, contractor or contract by the Agency for an appropriate period of time or while an investigation may be in process to clarify any criminal, fraudulent, or improper conduct, failure or inadequacy of performance which may lead to debarment.
- (42) **"Term contract"** means a contract established by the Purchasing Manager for a specific product or service for a specified time.

C - Public Access to Information

1-301 Public Access to Procurement Information

Procurement information shall be a public record to the extent required by S.C. Code Ann. Section 30-4-10 et seq. (The Freedom of Information Act) with the exception that commercial, financial or proprietary information obtained in response to a "Request for Proposal" or information that is privileged and confidential need not be disclosed. "Privileged and confidential" information is information not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information.

Examples of this type of information would include:

- (1) Customer lists;
- (2) Design recommendations and identification of prospective problem areas under an RFP;
- (3) Design concepts, including methods and procedures;
- (4) Biographical data on key employees of the bidder;
- (5) Credit or financial information.

Information and data on a user obtained from reports, questionnaires, discharge applications and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the Chief Executive Officer that the release of such information would divulge information, processes or methods of production entitled to protection as privileged and confidential information or as trade secrets of the user. When requested by the person furnishing the report, and approved by the Chief Executive Officer, the portions of a report which might disclose such shall not be made available for inspection by the public. It shall, however, be made available upon written request to governmental agencies for uses related to this Procurement Code, the NPDES (National Pollutant Discharge Elimination System) Permit, or other uses determined appropriate by the Chief Executive Officer. The information shall be available for use by the Agency in judicial review or enforcement proceedings involving the person furnishing the

ARTICLE I

information. Wastewater constituents and characteristics shall not be recognized as confidential information.

Evaluative documents pre-decisional in nature such as inter- or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the pre-decisional deliberations. At the time of submitting a proposal or bid, the party supplying a bid or proposal must identify any portions of the proposal or bid considered by the party to be a trade secret and thus eligible to be withheld from public inspection and copying. If the information identified by the party is a trade secret, as defined in (cf. SC Code §30-4-40(a) (1), it may be withheld from public inspection and copying. If the party fails to identify information as a trade secret, the entire bid or proposal is to be made available for public inspection and copying.

D - Compliance with Federal Requirements

1-401 Compliance with Federal Requirements

Where procurement involves the expenditure of federal assistance or contract funds, the Agency shall comply with such federal law, regulations or grant conditions which are mandatory even though such requirements are not presently reflected in this Procurement Code.

ARTICLE II

ARTICLE II - PROCUREMENT ORGANIZATION

A - Responsibility for Procurement Regulation

2-101 Establishment, Appointment and Tenure

The Purchasing Manager will be appointed by the Chief Executive Officer and will serve at the will of the Chief Executive Officer.

2-102 Authority and Duties

- (1) Purchasing Manager. The Purchasing Manager or such other person designated by the Chief Executive Officer shall serve as the procurement official of the Agency.
- (2) Duties. The Purchasing Manager shall have the duties assigned to him by the Chief Executive Officer, which may include directing the Purchasing Manager to:
 - a. procure or supervise the procurement of all supplies, services, and construction needed by the Agency;
 - b. exercise general management supervision, control and disposal of all inventories and supplies belonging to the Agency;
 - c. sell, trade, or otherwise dispose of surplus supplies belonging to the Agency upon Chief Executive Officer's and/or Board of Commissioners' approval; and
 - d. establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction in conjunction with the user department;
 - e. may prepare, or cause to be prepared, and issue specifications for supplies, services, and construction required by the Agency. The Purchasing Manager shall obtain expert advice and assistance from personnel of the using department in the development of specifications. All specifications shall be so drafted so as to assure cost effective procurement and shall not be unduly restrictive;
 - f. Exempted items to 2-102, e.) would include Specifications for supplies, services, and construction items exempted in Section 2-203 (Exemptions), and shall be prepared by the using department in accordance with the provisions of this Procurement Code.

2-103 Delegation of Authority

The Purchasing Manager may delegate authority to purchase certain supplies, services, and/or construction to other Agency officials or designees of the Purchasing Department, if such delegation is deemed necessary for the effective procurement of those items.

ARTICLE II

2-104 Authorizations and Signatures

Purchase requisitions will be approved by staff and managers as authorized by the Chief Executive Officer pursuant to this Procurement Code and as by written internal procedures of the Agency. Unauthorized deviations by staff from the provisions of this Procurement Code and internal procedures will be subject to the Agency's Personnel Policy.

B - Organization of Public Procurement

2-201 Centralization of Procurement Authority

While day-to-day purchases may be executed by user departments as authorized by and up to the level approved by the Chief Executive Officer, except as otherwise provided in this Part, the authority relating to the procurement of supplies, services and construction is hereby vested in the Purchasing Manager as provided in this Procurement Code.

2-202 Methods of Selection

Agency contracts for over \$100,000 shall be awarded by Competitive Sealed Bidding pursuant to Section 3-101 or Competitive Sealed Proposals pursuant to Section 3-102 or qualification based selection for Architect-Engineer, Construction Management and Land Surveying Services pursuant to Section 3-103. However, except as otherwise required by law, when the Agency determines in writing that the use of Competitive Sealed Bidding or Competitive Sealed Proposal or qualification based selection for Architect-Engineer, Construction Management and Land Surveying Services are either not practicable or not advantageous to the Agency, contracts may be awarded pursuant to the following provisions:

- (1) Section 2-203 (Authority to Contract for Certain Services and Other Exemptions);
- (2) Section 4-101 (Competitive Fixed Price Bidding);
- (3) Section 4-102 (Competitive Best Value Bidding);
- (4) Section 4-103 (Competitive On-Line Bidding);
- (5) Section 4-104 (CM-AT-Risk);
- (6) Section 5-102 (Sole Source Procurement);
- (7) Section 5-103 (Emergency Procurement);
- (8) Section 5-104 (Authority Contract Price Procurement);
- (9) Section 4-105 (Procurement at Auction).

2-203 Authority to Contract for Certain Services and Other Exemptions to Public Procurement

- (1) General Authority. For the purpose of procuring professional services normally obtained on a fee basis rather than by competitive procurement, (employment services, health care, information technology, environmental management, public relations, financial services and

ARTICLE II

other consultant services) the Agency's Chief Executive Officer may contract for such services up to one year if the contract does not exceed One Hundred Fifty Thousand (\$150,000) Dollars. Those contracts exceeding One Hundred Fifty Thousand (\$150,000) Dollars shall be submitted to the Board of Commissioners for approval.

- (2) Legal and CPA Services. No contract for the services of general counsel or CPA services to the Board of Commissioners may be awarded without the approval of the Board of Commissioners.
- (3) Other Exemptions. Supplies and services that are exempt from the competitive requirement of this Procurement Code shall be procured by the appropriate authorization and procedures. Examples but not limited to:
 - a. published books, maps, periodicals, and technical pamphlets;
 - b. postage stamps and postage fees;
 - c. other normal, fixed, recurring operation expenses such as utilities, etc.

2-204 Auditing

The Administrative Finance Director in conjunction with the Agency's Controller and Purchasing Manager shall develop a written plan for auditing of the Agency's procurement under this Procurement Code to ensure adequacy of the system's internal controls and compliance with the requirements of this Procurement Code.

C - Future Regulations

2-301 Future Regulations

The Board of Commissioners may pass additional regulations. No new regulation shall change any commitment, right, or obligation of the Agency or any contractual right in existence at the time of the new regulation.

2-302 Recertification

The Procurement Code shall be resubmitted to the Board of Commissioner for recertification during the first quarter of the fifth year following initial approval. The current Procurement Code remains in effect until replaced.

ARTICLE III

ARTICLE III – TRADITIONAL SOURCE SELECTION AND CONTRACT FORMATION

A - Methods of Source Selection

3-101 Competitive Sealed Bidding

- (1) Condition for Use. Contracts shall be awarded by Competitive Sealed Bidding subject to the provisions of Section 2-202 (Methods of Source Selection) and the ensuing regulations unless otherwise provided for in this section.
- (2) Invitation for Bids. An invitation for bids shall be issued in an efficient and economical manner to at least three (3) qualified sources on the bidders' lists appropriate for the particular procurement, and shall include specifications and all contractual terms and conditions applicable to the procurement. If the list does not contain three (3) qualified sources, invitations for bids shall be issued to such qualified sources as are available. Notice pursuant to Section 3-101(3) is also required.
- (3) Notice. Adequate notice of the Invitation for Bid shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice shall include utilization of a bidders' list and publication in South Carolina Business Opportunities or through another means of central electronic advertising, as well as at Agency's web site. The Agency may charge vendors the cost incurred for copying and mailing request for bids or documents requested in response to a procurement.
- (4) Bid Opening. Bids shall be opened publicly in the presence of two or more witnesses at the time and place designated in the Invitation for Bid. The amount of each bid, and such other relevant information as may be specified by the Procurement Code, together with the name of each bidder shall be read aloud and recorded. The record and each bid shall be open to public inspection after award. Records of Bids shall be maintained by the Agency for three years.
- (5) Bid Evaluation and Acceptance. Bids shall be unconditional and accepted without alteration or correction, except as authorized in this Procurement Code. Bids shall be evaluated based on the requirements set forth in the Invitation for Bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.
- (6) Correction or Withdrawal of Bids: Cancellation of Awards. Corrections or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Agency

ARTICLE III

shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts after award but prior to performance shall be supported by a written decision made by the Purchasing Manager and approved by Chief Executive Officer but only upon a written request by a bidder and when documents will clearly evidence the error or mistake and which demonstrates the bidder will suffer substantial loss. Any correction causing the bidder to become low bidder must be clearly evident by an analysis of the bid documents.

- (7) Discussion with Bidders. As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the procuring agency's sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any bidder's bid must be documented in writing by the Purchasing Manager and shall be included with the bid. Documentation concerning the clarification shall be subject to disclosure upon request.
- (8) Tie Bids. For purposes of this section, the location of a bidder will be determined based on whether the bidder has an office in the geographic area described. If two or more responsible and responsive bidders are tied in price while otherwise meeting all of the required conditions, awards are determined as follows:
 - a. If there is a South Carolina firm tied with an out-of-state firm, the award must be made automatically to the South Carolina firm.
 - b. Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of the State must be resolved in favor of the South Carolina commodity.
 - c. Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in the Agency's service area.
 - d. Tie bids involving South Carolina firms both of whom are located in the Agency's service area must be resolved by the flip of a coin in the office of the Purchasing Manager witnessed by all interested parties.
 - e. In all other situations where bids are tied, the award will be made by the Agency to the tied bidder offering the quickest delivery time, or if the bidders have offered the same delivery time, the tie shall be resolved by the flip of a coin in the office of the Purchasing Manager, witnessed by all interested parties.
- (9) Award. Unless there is a compelling reason to reject bids as prescribed by regulation of the Board of Commissioners, notice of an award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location specified in the invitation for bids. Prior to the posting of the award, the Agency may negotiate with the lowest responsive and responsible bidder to lower his bid within the scope of the invitation for bids. The invitation for bids and the posted notice must contain a statement of a bidder's right to protest and the date and location of posting must be announced at bid opening.

ARTICLE III

- a. When a contract has a total or potential value in excess of One Hundred Thousand (\$100,000) Dollars, in addition to the posted notice, notice of an award must be given to all bidders responding to the solicitation, except when only one response is received. Such notice must contain a statement of the bidder's right to protest. When a contract has a total or potential value in excess of One Hundred Thousand (\$100,000) Dollars, ten (10) days after notice is given, the Agency may enter a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. When only one response is received, the notice of award and the sixteen day delay of award may be waived. A determination of responsibility must be made before award in accordance with Section 3-301.
 - b. In the event only one bid is received, the Purchasing Manager shall (a) verify that the project was duly advertised as required in these regulations, (b) determine the relation of the bid to the engineer's estimate, and (c) determine whether the bid, in the interest of the Agency, should be rejected and advertised again, or accepted, and make his recommendation in writing to the Chief Executive Officer.
- (10) Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description/scope of work to support an award based on price, an Invitation for Bid may be issued requesting the submission of un-priced offers to be followed by an Invitation for Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
- (11) Receipt and Safeguarding of Bids. The Purchasing Manager shall be responsible for handling all bids (including modifications) received prior to the time of opening and shall be kept secure and unopened. Necessary precautions shall be taken to ensure the security of the bid box or safe. If an invitation for bids is canceled, bids shall be returned to the bidders.

Prior to bid opening, information concerning the identity and number of bids received shall not be available to the public. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

- (12) Negotiations After Unsuccessful Competitive Sealed Bidding.
- a. When bids received pursuant to an invitation for bids are considered unreasonable by the Agency, exceed available funds or were not independently reached in open competition, and it is determined in writing by the Purchasing Manager or his designee that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder, provided that the lowest base bid does not exceed available funds by an amount greater than five (5%) percent of the budget established for that portion of the work. However, each responsible and responsive bidder who submitted a bid under the original invitation must be notified of the determination and given a reasonable opportunity to negotiate. The negotiated price

ARTICLE III

must be lower than the lowest bid received under the original solicitation. The Agency may change the scope of the work to reduce the cost to be within the established budget.

- b. When the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the Agency is able to identify additional funds for the project, in the amount of the difference between the lowest base bid and the approved available funds for the project, the Agency, in its discretion, may elect to accept the bid.

3-102 Competitive Sealed Proposals

- (1) Conditions for Use. A contract shall be entered into by Competitive Sealed Proposals subject to the provisions of Section 2-202 and the ensuing regulations, unless otherwise provided for in this section.
- (2) Request for Proposals. Proposals shall be solicited through a Request for Proposal.
- (3) Notice. Adequate notice of the Request for Proposal shall be given at a reasonable time prior to the date set forth therein for the opening of proposals. Such notice shall include utilization of an offerors' list and publication in South Carolina Business Opportunities or another means of central electronic advertising. The Agency may charge vendors the cost incurred for copying and mailing request for proposals or documents requested in response to a procurement.
- (4) Proposal Opening. Proposals shall be publicly opened and only the names of the offerors disclosed at the proposal opening. Contents of competing offerors shall not be disclosed during the process of negotiation. Proposals shall be open for public inspection after contract award. Authentic confidential information as described in this Procurement Code marked as such in each proposal shall not be disclosed without written consent of the offeror.
- (5) Discussion with Responsible Offerors and Revisions to Proposals. As provided in the Request for Proposal, discussions may be conducted with responsible offerors who submit proposals for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- (6) Evaluation Factors. The Request for Proposal shall state the evaluation factors in relative order of importance.
- (7) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the Agency taking into consideration the evaluation factors set forth in the Request for Proposal. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

ARTICLE III

- (8) Negotiations. Whether price was an evaluation factor or not, the Purchasing Manager may proceed in any of the manners indicated below, except that in no case may confidential information derived from proposals and negotiations submitted by competing offerors be disclosed:
- a. negotiate with the highest ranking offeror on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the Purchasing Manager, with the second, and then the third, and so on, ranked offerors to the level of ranking determined by the Purchasing Manager in his sole discretion;
 - b. during the negotiation process as outlined in item (a) above, if the Purchasing Manager is unsuccessful in their first round of negotiations, he/she may reopen negotiations with any offeror with whom he previously negotiated; or
 - c. the Purchasing Manager may make changes within the general scope of the request for proposals and may provide all responsive offerors an opportunity to submit their best and final offers.
- (9) Negotiations After Unsuccessful Competitive Sealed Proposals. When proposals received pursuant to an invitation for proposal under Section 3-102 are considered unreasonable by the Agency, or are not independently reached in open competition, or the low proposal exceeds available funds as certified by the Chief Executive Officer, and it is determined in writing by the Purchasing Manager or his designee that time or other circumstances will not permit the delay required to re-solicit competitive sealed proposal, a contract may be negotiated pursuant to the section, provided that:
- a. each responsible offeror who submitted a proposal under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
 - b. the negotiated price is lower than the lowest rejected proposal by any responsible and responsive offeror under the original solicitation: and
 - c. the negotiated price is the lowest negotiated price offered by any responsible and responsive offer.

3-103 Architect-Engineer, Construction Management and Land Surveying Services

- (1) Applicability and Policy. The Chief Executive Officer may announce a need for architectural, engineering, construction management or land surveying services. These services shall be procured as provided for in Section (2-202) except as authorized by Section (5-102) Sole Source procurement, Section (5-103) Emergency procurement; Section (4-104) Construction Manager At Risk; Section (6-102) Indefinite Delivery Contracts.
- (2) Procurement procedures. Architect-Engineer, Construction Management and Land Surveying Services

ARTICLE III

- a. General. The Agency shall establish its own engineering services selection committee hereafter referred to as the selection committee, which shall be composed of those individuals whom the Chief Executive Officer determines to be qualified to make an informed decision as to the most competent and qualified firm for the purposed project. The Chief Executive Officer or his qualified responsible designee shall sit as a permanent member of the selection committee for the purpose of coordinating and accounting for the committee's work.
- b. Advertising of the Project Description. The selection committee shall be responsible for:
 - (i) development of a description of the proposed project;
 - (ii) enumeration all required professional services for that project; and
 - (iii) preparing a formal RFQ to firms for submission;
 - (iv) RFQ may include, but is not be limited to;
 1. a description of the proposed project;
 2. a general scope of work;
 3. a description of the required professional services for the project;
 4. the submission deadline;
 5. how interested firms may apply for consideration; and
 6. an engineer services questionnaire for the project;
 - (v) all such RFQs shall be formally advertised at least once in the South Carolina Business Opportunities publication or through another means of central electronic advertising.
- c. Request for Qualifications. Prior to soliciting proposals subject to this Section, the Agency, acting through the Purchasing Manager, may issue a request for qualifications. Such request shall contain at a minimum a description of the services to be solicited by the RFQ, the general scope of the work, the deadline for submission of information, and how prospective offerors may apply for consideration. The request shall require information concerning the offerors':
 - (i) past performance;
 - (ii) experience of professional personnel to be assigned to the project;
 - (iii) demonstrated ability to meet time and budget requirements;
 - (iv) current, and projected work loads of the firms;
 - (v) creativity and insight related to the project;
 - (vi) related experience on similar projects;
 - (vii) locality; and
 - (viii) other information specified in the RFQ.

Adequate notice of the request for qualifications shall be given in the manner provided in Section 3-101(3). After receipt of the responses to the request for qualifications ReWa's selection committee shall rank the prospective offerors from most qualified to least qualified on the basis of the information provided. Proposals shall then be

ARTICLE III

solicited from the top prospective offerors by means of a request for proposal. The failure of a prospective offeror to be selected to receive the request for proposal shall not be grounds for protest.

- d. Response to RFP. Other than when a Request for Qualifications has been solicited, adequate notice of the request for proposals shall be given in the manner provided in Section 3-101(3). Interested architect-engineer, construction management, and land surveying persons or firms may be required to respond to the RFP with current and accurate information regarding their qualifications as specified by the Agency;
- e. Interviews with Interested Firms. Following receipt of information from all interested persons and firms, the Agency's selection committee may hold interviews with at least three (3) persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews. A list of firms selected for interview shall be sent to all firms that submitted information in response to the advertisement. If less than three (3) persons or firms have responded to the advertisement, the committee may hold interviews with those that did respond. The Agency's selection committee's determination as to which will be interviewed shall be in writing and shall be based upon its review and evaluation of all submitted materials. The purpose of the interviews shall be to provide such further information as may be required by the Agency's selection committee to fully acquaint itself with the relative qualifications of the interested firms;
- f. Selection and Ranking of the Most Qualified. The Agency's selection committee shall evaluate each of the persons or firms interviewed in view of their:
 - (i) past performance;
 - (ii) the experience of professional personnel to be assigned to the project;
 - (iii) demonstrated ability to meet time and budget requirements;
 - (iv) current, and projected work loads of the firms;
 - (v) creativity and insight related to the project;
 - (vi) related experience on similar projects;
 - (vii) locality; and
 - (viii) other criteria as advertised in the project description.

Based upon these evaluations, the Agency's selection committee shall rank the applicants in priority order and submit the ranking with substantiating data in writing to the Chief Executive Officer. The Chief Executive Officer shall make the final selection. If the Chief Executive Officer's final ranking differs from the committee's, it shall be supported with a written determination substantiating how the selection is in the Agency's better interest. The Chief Executive Officer may in his discretion request that the committee conduct further interviews with one or more of the offerors to receive additional information or clarification. The committee shall provide written feedback to the Chief Executive Officer from any such interviews, and may submit amended rankings in the Chief Executive Officer's discretion.

ARTICLE III

- g. Notice of Selection and Ranking. When it is determined by the Agency that the ranking report is final, written notification of the election shall be immediately sent to all firms interviewed;
 - h. Negotiation of Contract. The Agency's Chief Executive Officer or his or her designee shall negotiate a contract for services with the most qualified person or firm at a compensation which is fair and reasonable to the Agency. Should the Chief Executive Officer or his or her designee be unable to negotiate a satisfactory contract with this person or firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third most qualified until a satisfactory contract has been negotiated. If no agreement is reached, additional persons or firms in order of their competence and qualifications shall be selected after consultation with the Agency's selection committee, and negotiations shall be continued in the same manner until agreement is reached;
 - i. Award of Contract. Once a contract has been successfully negotiated in accordance with Section 3-103 (g), notification of an award of a contract shall be sent to all firms responding to the RFP.
- (3) Construction Work Prohibited by Architect or Engineer or Construction Manager. No architect or engineer performing design work, or Construction Manager performing construction management services pursuant to a contract awarded under any provision of this chapter may perform other work on that project as a contractor or subcontractor either directly or through a business in which the architect, or his architectural or engineering construction management firm has any interest. For purposes of this section, safety compliance and other incidental construction support activities performed by the Construction Manager are not considered work performed as a contractor or subcontractor. Should the Construction Manager perform or be responsible for safety compliance and other incidental construction activities, and these support activities are in noncompliance with the provisions of Section 41-15-210, then the construction management firm is subject to all applicable fines and penalties. This prohibition shall not apply to Construction Manager At Risk performing services under Section 4-104 of this Procurement Code.

B – Cancellation and/or Rejection of Procurement

3-201 Cancellation of Invitation for Bids or Requests for Proposals

An Invitation for Bids, a Request for Proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part in the solicitation when it is in the best interest of the Agency. The reason therefore shall be made part of the contract file.

ARTICLE III

3-202 Rejection of Invitation for Bids or Requests for Proposals

- (1) Application. Unless there is a compelling reason to reject one or more bids/proposals, award will be made to the lowest responsible and responsive bidder, or the highest ranked responsible and responsive offeror. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders/offerors of any resulting modification or cancellation, thereby permitting bidders/offerors to change their bids/proposals and preventing the unnecessary exposure of bid prices and proposals.
- (2) Cancellation of Bids/Proposals Prior to Award. When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids or request for proposal shall be canceled. Invitations for bids or request for proposal may be canceled after opening, but prior to award, when the Purchasing Manager determines in writing that:
 - a. inadequate or ambiguous specifications were cited in the invitation for bid/request for proposal;
 - 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 Agency;
 - e. bids/proposals received indicate that the needs of the Agency can be satisfied by a less expensive article differing from that on which the bids/proposals were invited;
 - f. all otherwise acceptable bids/proposals received are at unreasonable prices;
 - g. the bids/proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
 - h. at the discretion of the Agency.
- (3) Minor Informalities and Irregularities. Are ones which have no effect or merely a trivial or negligible effect on total bid/proposal price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, bidders/offerors. The Purchasing Manager may either give the bidder/offeror an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the Agency. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:
 - a. failure of a bidder/offeror to return the number of copies of signed bids/proposals required by the solicitation;
 - b. failure of a bidder/offeror to furnish the required information concerning the number of the bidder's/offeror's employees or failure to make a representation concerning its size;
 - c. failure of a bidder to sign its bid, but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of that authorization, and the bid carries that signature or the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document, such as the submission of a bid

ARTICLE III

- guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;
- d. failure of a bidder/offeror to acknowledge receipt of an amendment to a solicitation; but only if
 - (i) the bid/proposal received indicates in some way that the bidder/offeror received the amendment, such as where the amendment added another item to the solicitation and the bidder/offeror submitted a bid, thereon provided that the bidder/offeror states under oath that it received the amendment prior to bidding and that the bidder/offeror will stand by its bid price or;
 - (ii) the amendment has no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or the relative standing of bidder/offerors, such as an amendment correcting a typographical mistake in the name of the Agency;
 - e. failure of a bidder/offeror to furnish an affidavit concerning affiliates;
 - f. failure of a bidder/offeror to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs;
 - g. failure of a bidder/offeror to furnish cut sheets or product literature;
 - h. failure of a bidder/offeror to furnish certificates of insurance;
 - i. failure of a bidder/offeror to furnish financial statements;
 - j. failure of a bidder/offeror to furnish references;
 - k. notwithstanding S. C. Code Ann. § 40-11-180, the failure of a bidder/offeror to indicate his contractor's license number or other evidence of licensure, provided that no contract shall be awarded to the bidder unless and until the bidder is properly licensed under the laws of South Carolina.

3-203 Rejection of Individual Bids or Proposals

- (1) General Application. Any bid/proposal which fails to conform to All requirements of the invitation for bids or request for proposal may be rejected.
- (2) Alternate Bids. Any bid which does not conform to the specifications contained or referenced in the invitation for bids may be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.
- (3) Nonresponsive Bids/Proposal. Any bid/proposal which fails to conform to the material bid specifications, the delivery schedule, or permissible alternates thereto stated in the invitation for bids or request for proposals, or other related material requirements, may be rejected as nonresponsive.
- (4) Conditions for the Rejection of Nonresponsive bids/proposals. A bid/proposal should be rejected when the bidder/offeror attempts to impose conditions which would modify requirements of the invitation for bids or request for proposal, or limit his liability to the

ARTICLE III

Agency, since to allow the bidder/offeror to impose such conditions would be prejudicial to other bidders/offerors. For example, bids/proposals should be rejected in which:

- a. the bidder/offeror attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to the Agency cannot be determined;
 - b. the bidder/offeror fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery";
 - c. the bidder/offeror states a price but qualified such price as being subject to "price in effect at time of delivery";
 - d. the bidder/offeror when not authorized by the invitation/request for proposal, conditions or qualifies his bid/proposal by stipulating that his bid/proposal is to be considered only if, prior to date of award, bidder/offeror receives (or does not receive) award under a separate procurement;
 - e. the bidder/offeror requires the Agency to determine that the bidder/offeror's product meets Agency specifications;
 - f. the bidder/offeror limits the rights of the Agency under any contract clause;
 - g. the bidder/offeror imbalances his bid/proposal (i.e., offering unreasonably low price on some items and compensating for them with unreasonably high prices on other items);
 - h. the bidder/offeror attaches any condition or qualification that reduces the bidder's/offeror's legal liability or increases the Agency's responsibility;
 - i. the Purchasing Manager determines in writing that the bid/proposal is unreasonable as to price;
 - j. the bidder/offeror fails to furnish a bid/proposal guarantee when such guarantee is required in accordance with the requirements of the invitation for bids or request for proposals;
 - k. the Purchasing Manager identifies a bid as incomplete or unsigned.
- (5) Exceptions to Rejection Procedures. Any bid/proposal received after the Purchasing Manager of the Agency or his designee has declared that the time set for bid/proposal opening has arrived, shall be rejected unless a bid/proposal was in the possession of the designated purchasing official and had been misplaced by Agency employees in that office. In this event, the Purchasing Manager shall annotate the bid tabulation/list of offerors and consider the misplaced bid/proposal along with the other previously received bids/proposals.

C - Qualifications and Duties

3-301 Responsibility of Bidders and Offerors

- (1) Agency Standards of Responsibility. Factors to be considered in determining whether a bidder is responsible include whether a prospective contractor has:

ARTICLE III

- a. available the appropriate financial, material, equipment, facility, technological and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
 - b. a satisfactory record of performance;
 - c. a satisfactory record of integrity;
 - d. qualified legally to contract with the Agency; and
 - e. supplied all necessary information in connection with the inquiry concerning responsibility.
- (2) Duty of Contractor to Supply Information. The prospective contractor shall supply information requested by the Purchasing Manager concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the Purchasing Manager may base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable.
- (3) Cost or pricing data. Contractor Certification. In the event that the Purchasing Manager establishes that the contract price is not based on adequate price competition, established catalog prices or market prices, price set by law or regulations, the Purchasing Manager may request submittals of cost or pricing data from the prospective contractor and a certification that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of mutually determined specified date prior to the date of the pricing of any contract awarded by competitive sealed proposals pursuant to Section 3-102 or pursuant to the sole source procurement Agency as provided in Section 5-102.
- (4) Demonstration of Responsibility. The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:
- a. evidence that such contractor possesses such necessary items; acceptable plans to subcontract for such necessary items; or
 - b. a documented commitment from; or
 - c. explicit arrangement with, a satisfactory source to provide the necessary items.
- (5) Determination of Responsibility. Responsibility of the bidder or offeror, as defined by Section 3-301(1) and shall be ascertained for each contract let by the Agency based upon full disclosure to the Purchasing Manager concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.
- (6) Justification for Contract Award. Before awarding a contract, the Purchasing Manager must be satisfied that the prospective contractor is responsible.
- (7) Written Determination of Non-responsibility. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Purchasing Manager in writing. A copy of the determination shall be sent promptly to the non-

ARTICLE III

responsible bidder or offeror. The final determination shall be made part of the procurement file.

3-302 Prequalification

Vendors may be pre-qualified for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such pre-qualified suppliers.

- (1) **Request for Qualifications.** Prior to soliciting bids/proposals, the Agency, acting through the Purchasing Manager, may issue a request for qualifications from prospective bidders/offerors. Such request shall contain at a minimum a description of the goods or services to be solicited by the invitation for bids/request for proposal, the general scope of the work, the deadline for submission of information, and how prospective bidders/offerors may apply for consideration. The request shall require information concerning the prospective bidders'/offerors' product specifications, qualifications, experience, and ability to perform the requirements of the contract.

Adequate notice of the request for qualifications shall be given in the manner provided in Section 3-101(3). After receipt of the responses to the request for qualifications from prospective bidders/offerors, the prospective bidders/offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Bids/proposals shall then be solicited from at least the top two prospective bidders/offerors by means of an invitation for bids/request for proposals. The failure of a prospective bidder/offeror to be selected to receive the invitation for bids/request for proposal shall not be grounds for protest.

- (2) **Bidders'/Offerors' Lists and Prequalification of Major Equipment.**

- a. **Bidders'/Offerors' Lists.** All sources requesting to be put on a bidders'/offerors' list shall be so enlisted, unless the Purchasing Manager in conjunction with the Agency's Engineer makes a written determination that the source should not be enlisted in accordance with regulations of the Agency. Decisions to reject enlistment shall be appealable to the Chief Executive Officer. The Purchasing Manager shall ensure that the bidders'/offerors' lists contain all known sources interested in participating in procurement and shall review periodically the bidders'/offerors' lists and require the addition to such lists of any appropriate sources which are not contained therein.

- b. **Prequalification of Major Equipment Manufacturers.** Until the end of the design phase of a project, the Agency will offer opportunities for major equipment manufacturers to be listed on the Major Equipment Bidders'/Offerors' List for future consideration if they pre-qualify major equipment. An evaluation of the equipment will be made by the Agency at no cost to the manufacturer if submittals are made before the end of the project design phase. If a manufacturer misses this deadline for prequalification, and the contractor submits an "or equal" substitution during the bidding process, the

ARTICLE III

manufacturer or contractor shall pay the Agency's consulting engineer directly for the cost of the evaluation. The contractor must obtain the approval of the "or equal" substitution by the Agency prior to the contractor's submission of his bid/proposal. Any submission after the date defined in the bid/proposal will not be allowed. The submittal by the manufacturer or the contractor for an "or equal" before or after that deadline shall include the following:

- (i) Descriptive literature including information on materials used, minimum design standards, standard design features, manufacturing processes and facilities, and similar information which indicate experience and expertise in the manufacture of the product being evaluated including costs, warranty information, electrical requirements and diagrams, and erection requirements and weights;
- (ii) Performance specifications applicable to the manufacturer's standard design which indicates the level of performance to be expected from the product;
- (iii) A complete set of submittal drawings of similar products which have been completed and placed into operation;
- (iv) A list of existing installations of products similar in type and size, information regarding experience at the installations;
- (v) A brochure or equivalent material indicating technical capabilities, field service capabilities and financial information;
- (vi) A complete list of all requirements of the Drawings and Specifications with which the manufacturer cannot conform, including reasons why alternate features are considered equivalent;
- (vii) References that can independently supply an operational and maintenance history of the equipment, including incidents of failure and repair during the warranty period of the product that will enable the Agency's engineer to develop a chart showing operation and maintenance and carrying costs based upon the above history. If no history is available equal to the time provided for in the warranty, then it should be provided from the time of origin of the product;
- (viii) A chart showing the projection of the cost of operation, maintenance and carrying cost until the date the manufacturer estimates the equipment will have to be replaced, together with the documentation upon which the projection is based;
- (ix) A list indicating the availability of spare parts and the time necessary for delivery.

3-303 Bid/Proposal Security

- (1) Requirement for Bid/Proposal Security. Bid/proposal security shall be required for all competitive sealed bid/proposal for construction contracts when the price is estimated by the Purchasing Manager to exceed One Hundred Thousand (\$100,000) Dollars. Bid/Proposal security shall be a bond provided by a surety company with an "A" minimum rating as stated in the most current publication of "Best's Key Rating Guide, Property Liability", and authorized to do business in this State, or the equivalent in cash, or otherwise supplied in a form satisfactory to the Agency. Nothing herein prevents the requirement of

ARTICLE III

such bonds on construction contracts under One Hundred Thousand (\$100,000) Dollars when the circumstances warrant.

- (2) Amount of Bid/Proposal Security. Bid/Proposal security shall be in an amount equal to at least 5% of the amount of the bid/proposal.
- (3) Rejection of Bid/Proposal for Noncompliance with Bid/Proposal Security Requirements. The invitation for bids/request for proposal shall require a bid/proposal security bond or approved security in a proper amount. Noncompliance will require that the bid/proposal be rejected except that a bidder/offeror who fails to provide bid/proposal security in the proper amount or a bid/proposal bond with the proper rating shall be given one business day from bid/proposal opening to cure such deficiencies. If the bidder/offeror cannot cure these deficiencies within one business day of bid/proposal opening, his bid/proposal shall be rejected.
- (4) Withdrawal of Bids. After the bids/proposals are opened, they shall be irrevocable for the period specified in the Invitation for Bids/Request for proposals. If a bidder/offeror is permitted to withdraw its bid/proposal before award, no action shall be had against the bidder or the bid security.

3-304 Contract Performance and Payment Bonds

- (1) Required Amounts. When a construction contract is awarded in excess of Fifty Thousand (\$50,000) Dollars, the following bonds or security shall be delivered to the Agency and shall become binding on the parties upon the execution of the contract:
 - a. a performance bond satisfactory to the Agency, executed by a surety company authorized to do business in this State, or otherwise secured in a manner satisfactory to the Agency in an amount equal to 100% of the price specified in the contract; and
 - b. a payment bond satisfactory to the Agency, executed by a surety company authorized to do business in this State, or otherwise secured in a manner satisfactory to the Agency, for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

However, it is in the Agency's sole discretion to waive the performance bond requirement as outlined in Section 3-304 (1) a. above.

- (2) Agency to Require Additional Bonds. Nothing in this section shall be construed to limit the Agency of the Agency to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section.

3-305 Bond Forms and Copies

ARTICLE III

- (1) Bond Forms. The Purchasing Manager shall provide the form of bonds required by this Part.
- (2) Certified Copies. Any person may request and obtain from the Agency a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original (cf. SC Code §11-35-3030).

ARTICLE IV

ARTICLE IV – ALTERNATIVE SOURCE SELECTION AND CONTRACT FORMATION

4-101 Competitive Fixed Price Bidding

- (1) Conditions for Use. A contract may be entered into by competitive fixed price bidding subject to the provisions of Section 2-202 and the ensuing regulations, unless otherwise provided for in this section.
- (2) Fixed Price Bidding. The purpose of fixed price bidding is to provide multiple sources of supply for specific goods or services based on a pre-set maximum price which the Agency will pay for such goods or services.
- (3) Notice. Adequate notice of the solicitation shall be given in the same manner as provided in Section 3-101(3).
- (4) Pricing. The Agency may establish, prior to issuance of the fixed price bid, a maximum amount the Agency will pay for the goods or services desired.
- (5) Evaluation. Vendor responses to the fixed price bid will be reviewed to determine if they are responsive and responsible.
- (6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the requirements of the fixed priced bid. All bidders, whose bids, in the procuring agency's sole judgment, need clarification, shall be accorded such an opportunity.
- (7) Award. Award must be made to the responsive and responsible bidder(s) to the Agency's request for competitive fixed price bidding. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.
- (8) Remedies. The failure of a specific offeror to receive business, once it has been added to the awarded vendors list, shall not be grounds for a protest.

4-102 Competitive Best Value Bidding

- (1) Conditions for Use. A contract may be entered into by competitive best value bidding subject to the provisions of Section 2-202 and the ensuing regulations, unless otherwise provided for in this section.
- (2) Best Value Bidding. The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific goods or services based on pre-determined criteria identified by the Agency.
- (3) Notice. Adequate notice of the request for the solicitation shall be given in the same manner as provided in Section 3-101(3).
- (4) Bid Opening. At bid opening, the only information that will be released is the names of the participating bidders. Cost information will be provided after the ranking of bidders and the issuance of award.
- (5) Evaluation Factors. The best value bid shall state the factors to be used in determination of award and the numerical weighting for each factor. Life cycle cost (including initial capital

ARTICLE IV

expense and operational cost) must be a factor in determination of award and cannot be weighted at less than sixty (60%) percent. Best value bid evaluation factors may be defined to include, but are not limited to, any of the following as determined by the Agency in its sole discretion and not subject to protest:

- a. Operational costs that the Agency would incur if the bid is accepted;
 - b. Quality of the product or service, or its technical competency;
 - c. Reliability of delivery and implementation schedules;
 - d. Maximum facilitation of data exchange and systems integration;
 - e. Warranties, guarantees, and return policy;
 - f. Vendor financial stability;
 - g. Consistency of the proposed solution with the Agency's planning documents and announced strategic program direction;
 - h. Quality and effectiveness of business solution and approach;
 - i. Industry and program experience;
 - j. Prior record of vendor performance;
 - k. Vendor expertise with engagement of similar scope and complexity;
 - l. Extent and quality of the proposed participation and acceptance by all user groups;
 - m. Proven development methodologies and tools; and
 - n. Innovative use of current technologies and quality results.
- (6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the best value bid. All bidders, whose bids, in the Agency's sole judgment, need clarification shall be accorded such an opportunity.
- (7) Selection and Ranking. Bids shall be evaluated by using only the criteria stated in the best value bid and by adhering to the weighting as assigned. All evaluation factors, other than cost, will be considered prior to determining the effect of cost on the score for each participating bidder. Received bids will be ranked in accordance with internal procurement procedures. Once the evaluation is complete, all responsive bidders shall be ranked from most advantageous to least advantageous to the Agency, considering only the evaluation factors stated in the best value bid.
- (8) Award. Award must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the Agency, taking into consideration all evaluation factors set forth in the best value bid. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.

4-103 Competitive On-line Bidding

- (1) Conditions for Use. A contract may be entered into by competitive on-line bidding, subject to the provisions of Section 2-202 and the ensuing regulations, unless otherwise provided in this section.
- (2) Bidding Process. The solicitation must designate both an Opening Date and Time and a Closing Date and Time. The Closing Date and Time need not be a fixed point in time, but

ARTICLE IV

may remain dependant on a variable specified in the solicitation. At the Opening Date and Time, the Agency must begin accepting real-time electronic bids. The solicitation must remain open until the Closing Date and Time. The Agency may require bidders to register before the Opening Date and Time and, as a part of that registration, to agree to any terms, conditions, or other requirements of the solicitation. Following receipt of the first bid after the Opening Date and Time, information on each bidder's ranking must be posted electronically to the Internet and updated on a real-time basis, visible only to the each individual bidder. At any time before the Closing Date and Time, a bidder may lower the price of its bid, except that after Opening Date and Time, a bidder may not lower its price unless that price is below the then lowest bid. Bid prices may not be increased after Opening Date and Time. Except for bid prices, bids may be modified only as otherwise allowed by this code. A bid may be withdrawn only in compliance with Section 3-101. If a bid is withdrawn, a later bid submitted by the same bidder may not be entertained for a higher price. If the lowest responsive bid is withdrawn after the Closing Date and Time, the Agency may award the contract to the second lowest responsive bid, cancel the solicitation in accordance with this code or reopen electronic bidding to all pre-existing bidders by giving notice to all pre-existing bidders of both the new Opening Date and Time and the new Closing Date and Time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.

- (3) Receipt and Safeguarding of Bids. Other than price, any information provided to the Agency by a bidder must be safeguarded as required by Section 3-101(11).
- (4) Provisions Not to Apply. Section 3-101(4) (Bid Opening) shall not apply to solicitations issued pursuant to this section.

4-104 Construction Manager At Risk

- (1) Condition for Use. A contract may be entered with a Construction Manager At Risk subject to the provisions of Section 2-202 and the ensuing regulations, unless otherwise provided for in this section.
- (2) Independent Design Services. Prior to issuance an RFP for Construction Manager at Risk Contract, the Agency may procure architect-engineer services, including completed programming, conceptual design, and preliminary budget, pursuant to Section 3-103. The architect-engineer may participate in the development of a preliminary budget, the development of a RFP, the evaluation, and ranking of the proposal, and all negotiations.
- (3) Proposal Process and Evaluation Factors. The RFP may include complete programming, the conceptual design, and a preliminary budget. The RFP shall request information concerning the prospective offer's qualifications, experience, and ability to perform the requirement of the contract, including, but not limited to, experience on projects of similar size, and complexity, and a history of on-time, on-budget, on schedule construction. The offer's proposed fee may be a factor in the determination award. Awards shall be made in accordance with Section 3-102.

ARTICLE IV

- (4) Subcontractor Selection. The Construction Manager shall invite bids from prospective subcontractors. As determined by the Agency, the Construction Manager may, or may not, self-perform work. Competitive proposals must be taken for any materials or equipment that is used to self-perform work.
- (5) Subcontractor Prequalification. Prior to inviting bids, the Agency may require the Construction Manager to issue a request for qualifications from prospective subcontractors. Such request shall contain at a minimum a description of the general scope of the work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform requirements of the contract. Prospective subcontractors shall be ranked by the Agency's Purchasing department from most qualified to least qualified on the basis of the information provided per internal procurement procedures. Bids shall then be solicited from at least the top three prospective subcontractors by means of an invitation for bids. If the Purchasing Manager, in consultation with the Construction Manager, determines in writing that there are not three subcontractors for a particular area of subcontract work which meet the required qualifications, the Construction Manager may invite bids only from those subcontractors deemed qualified.
- (6) Guarantee Maximum Price Contract. After all pre-construction services and final construction drawings have been completed, or prior thereto upon written determination of the Purchasing Manager, The Agency may negotiate with and enter into a GMP Contract for construction management. The GMP Contract shall include all costs for the construction and completion of the project, including all mobilization, general conditions, profit and overhead costs of any nature. The Agency shall have the right at any time, and for three (3) years following final payment, to audit the CM-At-Risk, and to disallow and to recover costs not properly charged to the project. Any costs incurred above the GMP shall be paid for by the Construction Manager.

4-105 Procurements at Auction or Sale of Supplies from Bankruptcy

Having knowledge of an auction the Agency may elect to participate. The Agency shall:

- (1) survey the needed items being offered at auction to ascertain their condition and usefulness;
- (2) determine a fair market value for new like items through informal quotes;
- (3) determine the fair market value from similar items considering age and useful life; and
- (4) estimated repair cost and delivery cost, if any, of the desired items.

Using this information, the Agency shall determine the maximum price that it can pay for each item desired. At the auction, the Agency shall not exceed the maximum price so determined.

ARTICLE V – SPECIAL PROCUREMENT METHODS

5-101 Small Purchases and Other Simplified Purchasing Procedures

This section addresses small purchases and other simplified procedures for purchase.

- (1) General. Any procurement may be made in accordance with small purchase procedures herein, provided that procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.
- (2) Rights to Waive. Under circumstances, where it is in the best interest of the Agency to waive the requirements pursuant to this section, the Purchasing Manager is to do so only after a justification in writing proving there was a genuine attempt to follow the requirements in this section to provide competitive environment, and authorization by the Chief Executive Officer.
- (3) Protest Rights. The provisions of Article VIII shall not apply to contracts awarded under the procedures set forth in this section.
- (4) Competition and Price Reasonableness. All purchase amounts addressed within this provision to be considered before tax on a line item level.
 - a. Purchases of Goods or Services Not in Excess of \$5,000. Small purchases not exceeding Five Thousand (\$5,000) Dollars may be accomplished without securing competitive quotations if the prices are considered to be reasonable. If approved to be processed by the authorized employees as designated by the Chief Executive Officer pursuant to Section 2-102 of this Procurement Code, the itemized price on the purchase requisition shall be interpreted as 'fair and reasonable'. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase 'not in excess of' may more than offset potential savings in detecting instances of overpricing. Therefore, action to verify the reasonableness of the price need be taken only when the Purchasing Manager suspects that the price may not be reasonable, e.g., comparison to previous price paid, personal knowledge of the item involved.
 - b. Purchases of Goods or Services from \$5,000.01 to \$50,000.00. Solicitation of written quotes from a minimum of three qualified sources of supply shall be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible sources.
 - c. Purchases of Goods or Services above \$50,000.01. Written solicitation of bids, or proposals shall be made through competitive procurement of goods or services above Fifty Thousand (\$50,000) Dollars. The award shall be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking responsive and responsible offeror.

ARTICLE V

- (5) Requirement to Advertise. All competitive procurements above Fifty Thousand (\$50,000) Dollars must be advertised at least once in the South Carolina Business Opportunities publication or through another means of central electronic advertising. Nothing herein prevents the requirement of such advertisement on competitive procurements under Fifty Thousand (\$50,000) Dollars when the circumstances warrant. The Agency may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to an advertised procurement.
- (6) Establishment Of Open Account Agreements
- a. General. An open account agreement is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply. Open accounts purchase agreements are designed to reduce administrative costs in accomplishing small purchases.
- b. Properties. Any open account purchase agreement should contain the following:
- (i) a description of the agreement in general terms for a specified period for the agreement and a stipulated maximum aggregate amount during the term;
 - (ii) a statement that the Agency is only obligated to the extent calls are made by an authorized employee to make a call for no greater amount than the amount authorized for such employee;
 - (iii) that a delivery ticket will be required showing the supplier referenced in the agreement, the date of the call, and an itemized list of supplies and services furnished and the price thereof with the date of delivery of the shipment; and
 - (iv) a statement that a summary invoice for the whole period will be submitted at any time during the period or at the end of the period as requested by the Agency. An open account agreement shall not be extended for a term longer than twelve months.

5-102 Sole Source Procurement

A contract may be awarded for a supply, service, or construction item without competition when the Purchasing Manager determines in writing that there is only one source for the required supply, service, or construction item. In cases of reasonable doubt, competition must be solicited to the extent practical under the circumstances. Any decision that a procurement be restricted to one potential vendor must be accompanied by an explanation as to why no other vendor is suitable or acceptable to meet the need.

5-103 Emergency Procurement

Notwithstanding any other provision of this Procurement Code, a manager may make or authorize others to make emergency procurements when there exists a threat to public health, regulatory compliance, welfare, critical economy or efficiency or safety under emergency conditions, or where normal daily operations are adversely affected; provided that such emergency procurement

ARTICLE V

shall be made with such competition as is practicable under the circumstances and does not exceed Ten Thousand (\$10,000) Dollars.

A manager making an emergency purchase shall be required to document the procurement within five (5) business days to the Purchasing Manager and Chief Executive Officer. For single item emergency purchase over Ten Thousand (\$10,000) Dollars, the manager is to contact the Chief Executive Officer for approval. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

5-104 Public Contract Price Procurement

The Agency may award a contract for goods or services without competition when it receives an equal or lower price than that provided to any public entity in South Carolina, North Carolina or Georgia through a competitive procurement process.

5-105 Authority for Leases

Nothing in this procurement code shall be construed to prevent the Agency from participating in leases or rentals of equipment or supplies or other items, as long as written justification is given for why it is in the best interest of the Agency and the public that the item should be leased rather than purchased.

5-106 Intergovernmental Relations

- (1) **Cooperative Purchasing Authorized.** The Purchasing Manager may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, or construction services with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units. Examples of such cooperative purchasing is State of South Carolina contracts, General Services Administration (GSA) contracts, supplies and/or services procured from another governmental agency, and U.S. Communities.
- (2) **Sale, Acquisition or Use of Supplies.** The Purchasing Manager may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of Article III and Article IV of this Procurement Code.
- (3) **Cooperative Use of Supplies or Services.** The Purchasing Manager may enter into an agreement, independent of the requirements of Article III and Article IV of this Procurement Code, with any Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

ARTICLE V

- (4) Joint Use of Facilities/Equipment. The Purchasing Manager may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public procurement Unit under the terms agreed upon between the parties.

ARTICLE VI

ARTICLE VI – TYPES OF CONTRACTS AND CONTRACTUAL ADMINISTRATION

A – Types of Contracts

Subject to the limitations of this Section, any type of contract which will promote the best interest of the Agency may be used.

6-101 Multi-Term Contract

- (1) Specified Period. A contract for supplies or services may be entered into for a period of time not to exceed three (3) years, provided the term of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. If it is deemed to be in the best interest of the Agency, four (4) one year extensions of a contract may be authorized by the Chief Executive Officer. This term limitation shall not apply to lease purchases.
- (2) Determination Prior To Use. Prior to the utilization of a multi-term contract, the Purchasing Manager shall determine in writing:
 - a. that estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - b. that such a contract will serve the best interest of the Agency by encouraging effective competition or otherwise promoting economies in procurement administration.
- (3) Cancellation Due To Unavailability of Funds In Succeeding Fiscal Periods. All multi-term contracts shall contain a clause stating that when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled at no cost to the Agency.

6-102 Indefinite Delivery Contract

- (1) General Applicability. Indefinite delivery contracts may be awarded on an as-needed basis for goods, construction, architectural-engineering, land surveying services and other professional services pursuant to the procedures set forth below.
 - a. Construction Services. When construction services contracts are awarded, each contract shall be limited to a total expenditure of Seven Hundred Fifty Thousand (\$750,000) Dollars for a 3-year period with individual project expenditures not to exceed One Hundred Fifty Thousand (\$150,000) Dollars.

ARTICLE VI

- b. Architectural-Engineering and Land Surveying Services. When architectural engineering and land surveying services contracts are awarded, each contract shall be limited to a total expenditure of Five Hundred Thousand (\$500,000) Dollars for a 3-year period with individual project expenditures not to exceed One Hundred Fifty Thousand (\$150,000) Dollars.
- c. Multiple Firms. The Agency may select multiple firms to supply goods and/or services on an as-needed basis by using any of the procurement methods described above in Articles III or IV with the exception that interviews are optional. However, the Agency shall qualify no more than 5 firms at any one time for the provision of any particular goods and/or services and shall strive to reasonably distribute expenditures annually. The term of years for any such contract for each individual vendor shall be subject to Section 6-101(1) above.

6-103 Other Delivery Contracts.

- a. Procurement Procedures for Small Contracts. The Chief Executive Officer may approve the selection of small services which are estimated not to exceed One Hundred Fifty Thousand (\$150,000) Dollars by direct negotiation and selection, taking into account:
 - (i) the nature of the project;
 - (ii) their capability to produce the required services within a reasonable time;
 - (iii) past performance;
 - (iv) eligibility to meet project budget requirements; and
 - (v) the proximity of the service provider or vendor to the project.
- b. Maximum fees payable to anyone firm or person pursuant to this Section is One Hundred Fifty Thousand (\$150,000) Dollars during a 12-month period from the Contract execution to any one firm for any one project.
- c. Large projects may not be broken down into smaller ones to circumvent the provisions of this section of the procurement code maximum fee limit.

B - Inspections, Audits, and Determinations

6-201 Right to Inspect Plant

The Agency may, at reasonable times, inspect the part of the plant or place of business of a vendor, contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the Agency.

6-202 Right to Audit Records

- (1) Audit of Cost or Pricing Data. The Agency may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that

ARTICLE VI

such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

- (2) Contract Audit. The Agency shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

6-203 Approval of Accounting System

The Purchasing Manager, the Chief Executive Officer or a designee of either officers may require that: (1) the proposed contractor's accounting system shall permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and (2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

6-204 Finality of Determinations

The determination required under any part of Section 2-202 (Methods of Selection) and the determination made by the Agency under any of the prescribed Methods of Selection shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

C - Reports and Records

6-301 Reporting of Anti-Competitive Practices

When any information concerning collusion or other anti-competitive practices among any bidder or offerors comes to the attention of the Agency, a notice of the relevant facts shall be provided to the Procurement Office who shall transmit these to the Agency's attorney.

6-302 Procurement Records

- (1) Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained in a contract file by the Purchasing Manager.
- (2) Retention of Procurement Records. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Agency.

ARTICLE VI

If a contract is being funded in whole or in part by assistance from a Federal agency, then all procurement records pertaining to that contract shall be maintained for five (5) years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement.

- (3) Electronic Record Keeping. An electronic record may be kept in accordance with this Procurement Code as long as the record is deemed to be secure, i.e. if:
 - a. it is created by application of a security procedure that is commercially reasonable and agreed to by the parties;
 - b. the electronic record can be verified not to have been altered since a specified point in time (cf. SC Code §26-5-520).
- (4) Electronic Signature. An electronic signature to be accepted as approval and/or authorization per the provisions of this Procurement Code when deemed to be secure, i.e. if:
 - a. it is created by application of a security procedure that is commercially reasonable and agreed to by the parties;
 - b. the electronic signature can be verified by use of a procedure that is recognized and approved by the parties;
 - c. when not previously agreed to by the parties, the electronic signature is:
 - (i) unique to the party using it; and
 - (ii) capable of identifying such party; and
 - (iii) created in a manner or using a means under the sole control of the party using it; and
 - (iv) linked to the electronic record to which it relates in a manner such that, if the record is changed, the electronic signature is invalidated (cf. SC Code § 26-5-510).
- (5) Security of Records. All records received electronically will be maintained electronically in a secure location and retained in original format.

ARTICLE VII

ARTICLE VII - SALE AND DISPOSAL OF SURPLUS PROPERTY

7-101 Surplus Property Determination

The Purchasing Officer upon authorization by the Chief Executive Officer may determine that any real or personal property has become surplus property. "Surplus Property" is defined as Agency-owned property that may have remaining useful life but that has no reasonable expectation of future use within the purposes of the Agency. Upon an authorization by the Chief Executive Officer that the property is Surplus, the Purchasing Manager shall proceed to obtain an appraisal of the value of the property and to ascertain the costs of sale or disposal or trade-in.

7-102 Sale of Real Property

Any Real Property to be sold may first be appraised by a qualified and licensed Real Estate Appraiser to provide guidance to the Agency on an appropriate course of sale which shall be selected in the discretion of the Chief Executive Officer. Any piece of real property over 2 acres shall be appraised and parcels may not be subdivided in order to avoid this requirement. Notice of sale shall be published once a week for two (2) weeks in South Carolina Business Opportunities or through another means of central electronic advertising, as well as at Agency's web site.

7-103 Sale of Personal Property

The Agency's Board of Commissioners delegates to its Chief Executive Officer the Agency to determine and dispose of surplus personal property. The sale of personal property shall be by auction, public sale or sealed bids to the highest bidder. The notice of sale or auction shall be published once a week for two (2) weeks in South Carolina Business Opportunities or through another means of central electronic advertising, as well as at Agency's web site. Such notice shall be given not less than ten (10) business days prior to the sale. The sale or auction shall be upon such terms and conditions as may be determined by the Chief Executive Officer.

7-104 Sale or Disposal of Junk Personal Property

The Chief Executive Officer or his designee, the Purchasing Manager, may designate as "junk" any personal property not in actual use and that is beyond practical repair or otherwise unserviceable. Upon such designation, the junk property shall be sold or auctioned to the highest bidder. Notice of such sale or auction shall be given in accordance with Section 3-101(3). Should the Purchasing Manager determine that the cost of sale or auction exceeds the fair market value of the junk item, the item may be disposed of or destroyed.

7-105 Trade-in Sales

ARTICLE VII

- (1) Trade-in Value. The Agency may trade-in personal property the trade-in value of which may be applied to the procurement or lease of like items. The trade-in value of such personal property shall not exceed Fifty Thousand (\$50,000) Dollars as determined by the Chief Executive Officer in accordance with applicable industry standards.
- (2) Approval of Trade-in Sales. When the trade-in value of personal property of the Agency exceeds Fifty Thousand (\$50,000) Dollars, the Board of Commissioners shall have the authority to determine whether (a) the subject personal property shall be traded in and the value applied to the purchase of new like items or (b) the property shall be classified as surplus and sold in accordance with the provisions of Section 7-103.

ARTICLE VIII – REMEDIES RESOLVING PROTEST

8-101 Protestor Rights

- (1) Right to Protest, Time for Protest, Exclusive Remedy. Any bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the Purchasing Manager in the manner stated in subsection (2) below within fifteen (15) days after such aggrieved persons know or should have known of the facts giving rise thereto.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the award of a contract shall protest to the Purchasing Manager in the manner stated in subsection (2) below within fifteen (15) days of the date notification of award is posted in accordance with this Procurement Code.

The rights and remedies granted in this article to a disappointed bidder, offeror, contractor, or subcontractor are to the exclusion of all other rights and remedies of such disappointed bidder, offeror, contractor, or subcontractor against the Agency at common law or otherwise for the loss or potential loss of an award of a contract under this Procurement Code. A failure to file a protest within this time period shall be an absolute bar to any later filing.

The rights and remedies granted by this section are not available for contracts with an actual or potential value of up to (\$100,000.00) One Hundred Thousand dollars.

- (2) Protest Procedure. A protest under subsection (1) above shall be in writing, submitted to the Purchasing Manager, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.
- (3) Duty and Authority to Attempt to Settle Protests. Prior to commencement of an administrative review as provided in subsection (4), the Purchasing Manager, the head of the purchasing agency, or designees thereof shall attempt to settle by mutual agreement, a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. Settlements require approval of the Board of Commissioners.
- (4) Administrative Review and Decision. If in the opinion of the Purchasing Manager, after reasonable attempt, a protest cannot be settled by mutual agreement, the Chief Executive Officer or a designated Hearing Officer shall promptly conduct an administrative review and shall issue a decision in writing within ten (10) days of completion of the review. The decision shall state the reasons for the action taken.
- (5) Notice of Decision. A copy of the decision under subsection (6) shall be mailed or otherwise furnished immediately to the protestant and any other party intervening and shall be accompanied by a statement of the right to appeal to the Board of Commissioners.
- (6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent or unless any person adversely affected by the decision requests an appeal to the Board of Commissioners within ten (10) business days of posting of the decision. The request for review shall be directed to the Chief Executive Officer, who shall forward the request to the Board of Commissioners and shall be in writing, setting forth the reasons why the person disagrees with the decision of the Hearing Officer.

Upon request, the Board of Commissioners will review the determination by the Hearing Officer without any further hearing and may uphold the determination or set it aside. The Board of Commissioners may also determine what relief, if any, shall be given to the protestant and whether or not there should be a re-award or re-bid of the contract. The decision of the Board of Commissioners is appealable to the circuit court in the manner provided by Section 22 of Article I of the South Carolina Constitution.

- (7) Stay of Procurement During Protest. A timely protest will stay procurement solicitation or award until a decision by the appropriate officer or Board of Commissioners; provided, however, if the Chief Executive Officer makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interest of the Agency, then procurement may continue.
- (8) Posting of Bond or irrevocable letter of credit. The Agency may require any bidder or offeror who files an action protesting the award of a contract and valued at One Million (\$1,000,000.00) Dollars or more to post a bond or irrevocable letter of credit payable to the Agency in an amount equal to one percent (1%) of the total potential value of the contract. In lieu of a bond or irrevocable letter of credit, the Purchasing Manager may accept a cashier's check or money order in the amount of the bond or irrevocable letter of credit. If, after completion of the administrative hearing process and any court proceedings, the Agency prevails, it may recover all reasonable reimbursement costs and charges associated with the protest which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the bidder or offeror protesting the award of a contract, the bond, irrevocable letter of credit, cashier's check, or money order shall be returned to the bidder or offeror. Failure to pay such costs and charges by the bidder or offeror protesting the award of a contract shall result in the forfeiture of the bond, irrevocable letter of credit, cashier's check, or money order to the extent necessary to cover the payment of all reasonable reimbursement costs adjudged against the protesting bidder or offeror. If the bidder or offeror prevails in the protest, the cost of providing the bond, irrevocable letter of credit or cashier's check may be sought from the Agency.
- (9) Frivolous Protest.
 - a. Signature Constitutes a Certificate. The signature of a party or his attorney upon a document seeking to protest action constitutes a certificate that the signer has read the document, and, to the best of his knowledge, information and belief, found after reasonable inquiry, is well grounded in fact and warranted.
 - b. Sanctions. Any document signed in violation of this section upon knowledge and notice from the Board of Commissioners may have imposed an appropriate sanction, including an order to pay reasonable expenses incurred by the Agency because of the filing of the protest, pleading, motion or other document, including a reasonable attorney fee (cf. SC Code §11-35-4330).

8-102 Authority to Debar or Suspend

This section applies to a debarment for cause from consideration for award of contracts or a suspension from such consideration during an investigation where there is probable cause for such debarment. After reasonable notice of debarment to the person or firm involved, and a reasonable opportunity for such person or firm to be heard, the Purchasing Manager shall recommend to the Chief Executive Officer the debarment of a person or firm for cause from consideration for award of contracts, provided that doing so is in the best interest of the Agency. The debarment shall be for a period as recommended by the Purchasing Manager. The same officer shall have authority to recommend suspension of a person from consideration for award of contracts, provided that doing so is in the best interest of the Agency, and there is probable cause for debarment. The suspension may be for a period of twelve (12), twenty-four (24), or thirty-six (36) months or a permanent debarment depending on the severity and must have approval of the Board of Commissioners. The causes for debarment or suspension shall include, but not be limited to, the following:

- (1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or in the performance of such contract or subcontract;
- (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or professional honesty which currently, seriously and directly affects responsibility as a contractor;
- (3) conviction under state or federal antitrust laws arising out of the submission of bids or proposals;
- (4) violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Manager to be so serious as to justify debarment action:
 - a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, the failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (5) any other cause the Purchasing Manager determines to be so serious and compelling as to affect responsibility as contractor, including debarment by another governmental entity for any cause listed herein.