

**CLEMSON UNIVERSITY PROCUREMENT REGULATIONS FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE
MAY 4, 2004**

(Statutory Authority: Chapter 41, Title 11 of the South Carolina Code of Laws)
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2015. Ratification.
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2000. Clemson University Procurement Regulations. The term "state" means Clemson University. The term "board" means the South Carolina State Budget and Control Board. These Regulations are adopted by the state, as approved by the Board, in order to establish policies, procedures, and guidelines relating to the procurement, management, control, of supplies, services, and construction, as applicable, under the authority of Section 11-41-180 and the Clemson University Procurement Code for Economic Development Infrastructure. Nothing contained in these Rules and Regulations shall be construed to waive any rights, remedies or defenses Clemson University might have under any laws of the State of South Carolina.
2015. Ratification.

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<p>A. Unauthorized Procurements. The ratification of an act obligating Clemson University in a contract by any person without the requisite authority to do so by an appointment or delegation under the procurement Code rests with the President of Clemson University who has the authority to ratify all such acts. It is prohibited for a procurement officer to ratify such acts.</p>
<p>2030. Competitive Sealed Bidding--The Invitation for Bids. The invitation for bids shall be used to initiate a competitive sealed bid procurement and shall include the following, as applicable:</p> <ul style="list-style-type: none">(1) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information;(2) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description;(3) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and(4) Instructions to bidders regarding how to identify those portions of their bid which they consider to be proprietary information or otherwise exempt from disclosure. Bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of seven (7) days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer.
<p>2040. The Official State Government Publication. The name of the official state government publication shall be known as the "South Carolina Business Opportunities."</p>
<p>2045. Receipt and Safeguarding of Bids.</p> <p>A. Procedures Prior to Bid Opening. All bids (including modifications) received prior to the time of opening shall be kept secure and, except as provided in Subsection B below, unopened. If an invitation for bids is canceled, bids shall be returned to the bidders. Necessary precautions shall be taken to insure the security of the bid. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to Clemson University employees, and then only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.</p> <p>B. Unidentified Bids. Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the Chief Procurement Officer. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the aforesaid official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids' number, and his signature, and then shall immediately reseal the envelope.</p>

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<p>2050. Bid Opening.</p> <p>A. Procedures.</p> <p>The procurement officer or his designee shall decide when the time set for bid opening has arrived, and shall so declare to those present. He shall then personally open all bids received prior to that time, and read aloud so much thereof as is practicable, including prices, to those persons present and have the bids recorded. The amount of each bid and such other relevant information, together with the name of each bidder, shall be tabulated. The tabulation shall be maintained in the project file.</p> <p>B. If it becomes necessary to postpone a bid opening, the procurement officer shall issue the appropriate amendments to the solicitation postponing or rescheduling the bid opening. When the procuring agency is closed due to force majeure, bid opening will be postponed to the same time on the next official business day.</p> <p>C. Disclosure of Bid Information. Bid information shall be released only as required by the Freedom of Information Act, Chapter 4 of Title 30, but only after contract award or bid cancellation.</p>
<p>2055. Bid Acceptance and Bid Evaluation.</p> <p>When necessary for the best interest of Clemson University, bid criteria to determine acceptability may include 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 measurable costs to include, but not be limited to, discounts, transportation costs, total or life cycle costs.</p>
<p>2060. Telegraphic Bids.</p> <p>As a general rule, telegraphic bids will not be authorized. When, in the judgment of the procurement officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, sealed telegraphic bids may be authorized.</p>
<p>2065. Rejection of Bids.</p> <p>A. Unless there is a compelling reason to reject one or more bids, award will be made in accordance to the Code. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices. As a general rule after opening, an invitation for bids should not be canceled and readvertised due solely to increased quantities of the items being procured; award should be made on the initial invitation for bids and the additional quantity required should be treated as a new procurement.</p> <p>B. Cancellation of Bids Prior to Award.</p> <p>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 shall be cancelled. Invitations for bids may be cancelled after opening, but prior to award, when such action is consistent with Subsection A above and the procurement officer determines in writing that:</p> <p>(1) inadequate or ambiguous specifications were cited in the invitation;</p>

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(2) specifications have been revised;
(3) the supplies or services being procured are no longer required;
(4) the invitation did not provide for consideration of all factors of cost to Clemson University, such as cost of transporting state furnished property to bidders' plants;
(5) bids received indicate that the needs of Clemson University can be satisfied by a less expensive article differing from that on which the bids were invited;
(6) all otherwise acceptable bids received are at unreasonable prices;
(7) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
(8) for other reasons, cancellation is clearly in the best interest of Clemson University. Determinations to cancel invitations for bids shall state the reasons therefore.
C. Extension of Bid Acceptance Period.
Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for readvertisement.
2070. Rejection of Individual Bids.
A. General Application.
Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.
B. 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.
C. Any bid which fails to conform to the delivery schedule, to permissible alternates thereto stated in the invitation for bids, or to other material requirements of the solicitation may be rejected as nonresponsive.
D. Modification of Requirements by Bidder.
Ordinarily a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to Clemson University, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids should be rejected in which the bidder:
(1) attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to Clemson University cannot be determined;
(2) fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery;"
(3) states a price but qualified such price as being subject to "price in effect at time of delivery;"
(4) when not authorized by the invitation, conditions or qualifies his bid by stipulating that his bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement;
(5) requires Clemson University to determine that the bidder's product meets state specifications; or
(6) limits the rights of Clemson University under any contract clause.

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E. Price Unreasonableness. Any bid may be rejected if the procurement officer determines in writing that it is unreasonable as to price.
F. Bid Guarantee Requirement. When a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected.
G. [Deleted]
H. Exceptions to Rejection Procedures. Any bid received after the procurement officer has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the designated purchasing office or the mail room which services that purchasing office prior to the bid opening.
2075. All or None Qualifications. Unless the invitation for bids so provides, a bid is not rendered nonresponsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the invitation for bids. However, bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualification is substantive and affects the rights of the other bidders.
2085. Correction or Withdrawal of Bids; Cancellation of Awards.
A. General Procedure. A bidder or offeror must submit in writing a request to either correct or withdraw a bid to the procurement officer. Each written request must document the fact that the bidder's or offeror's mistake is clearly an error that will cause him substantial loss.
B. Correction Creates Low Bid. To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake in the judgment of the procurement officer is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.
C. Cancellation Of Award Prior To Performance. When it is determined after an award has been issued but before performance has begun that Clemson University's requirements for the goods or services have changed or have not been met, the award or contract may be canceled and either reawarded or a new solicitation issued, if the Chief Procurement Officer determines in writing that:
(1) Inadequate or ambiguous specifications were cited in the invitation;
(2) Specifications have been revised;
(3) The supplies or services being procured are no longer required;
(4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
(5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
(6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;

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(7) Administrative error of the procuring agency discovered prior to performance, or
(8) For other reasons, cancellation is clearly in the best interest of the State.
2090. Award.
A. Application.
The contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids.
B. The procurement officer shall award on the date announced in the Invitation for Bids, unless the procurement officer determines, and gives notice, that a longer review time is necessary. The procurement officer shall give notice of a time extension to each bidder by posting it at the location announced in the Invitation for Bids.
C. Written notice of award shall be sent to the successful bidder in procurements over \$25,000.00. Notice of award shall be made available to the public on request and shall be posted at the location specified in the Invitation for Bids.
2095. Competitive Sealed Proposals.
A. Request for Proposals.
The provisions of Regulation 2040 shall apply to implement the requirements of Section 1530 (2), Public Notice.
B. Receipt and Safeguarding of Proposals.
The provisions of Regulation 2045 shall apply for the receipt and safeguarding of proposals.
C. Receipt of Proposals.
For the purposes of implementing Section 1530 (3), Receipt of Proposals, the following requirements shall be followed:
(1) Proposals shall be opened by the procurement officer in the presence of one or more witnesses at the time and place designated in the request for proposals. A tabulation of those offering a proposal shall be maintained in the project file. Contents of competing offers shall not be disclosed during the process of negotiation. All offerors must visibly mark as "confidential" each part of their proposal which they consider to be proprietary information.
D. Evaluation of Proposals.
The provisions of Regulation 2055 shall apply to implement the requirements of Section 1530(5), Evaluation Factors.
E. Minor Informalities and Irregularities in Proposals.
The provisions of Section 1520(13) shall apply to competitive sealed proposals.
F. [Deleted]
G. Other Applicable Provisions.
The provisions of the following Regulations shall apply to competitive sealed proposals:
(1) Regulation 2060, Telegraphic Bids,
(2) Regulation 2065, Rejection of Bids,
(3) Regulation 2070, Rejection of Individual Bids,
(4) Regulation 2075, All or None Qualifications,

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(5) Regulation 2085, Correction or Withdrawal of Bids; Cancellation of Awards, and Cancellation of Awards Prior to Performance.
2100. Blanket Purchase Agreements.
A. [Deleted]
B. Establishment of Blanket Purchase Agreements.
(1) General. A blanket purchase 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. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.
(2) Alternate Sources. To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive sources shall be given an equal opportunity to furnish supplies or services under such agreements.
(3) Terms and Conditions. Blanket purchase agreements shall contain the following provisions:
(a) Description of agreement--a statement that the supplier shall furnish supplies or services, described therein in general terms, if and when requested by the Procurement Officer, or his authorized representative, during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the supplier is in a position to furnish.
(b) Extent of obligation--a statement that the State is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement.
(c) Notice of individuals authorized to place calls and dollar limitations--a provision that a list of names of individuals authorized to place calls under the agreement, identified by organizational component, and the dollar limitation per call for each individual shall be furnished to the supplier by the Procurement Officer.
(d) Delivery tickets--a requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:
(1) name of supplier;
(2) blanket purchase agreement number;
(3) date of call;
(4) call number;
(5) itemized list of supplies or services furnished;
(6) quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and
(7) date of delivery or shipment.
(e) Invoices--one of the following statements:
(1) A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever

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<p>occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets; or</p> <p>(2) An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets;</p> <p>(3) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated provided that a consolidated payment will be made for each specified period; and the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later. This procedure should not be used if the accumulation of the individual invoices materially increases the administrative costs of this purchase method.</p>
<p>C. Competition Under Blanket Purchase Agreement.</p> <p>Calls against blanket purchase agreements shall be placed after prices are obtained. When concurrent agreements for similar items are in effect, calls shall be equitably distributed. In those instances where there is an insufficient number of BPAs for any given class of supplies or services to assure adequate competition, the individual placing the order shall solicit quotations from other sources.</p>
<p>D. Calls Against Blanket Purchase Agreement.</p> <p>Calls against blanket purchase agreements generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed on State Purchase Order Form. Documentation of calls shall be limited to essential information. Forms may be developed for this purpose locally and be compatible with the Comptroller General's Office STARS system.</p>
<p>E. Receipt and Acceptance of Supplies or Services. Acceptance of supplies or services shall be indicated by signature and date on the appropriate form by the authorized State representative after verification and notation of any exceptions.</p>
<p>F. Review Procedures. The governmental body shall review blanket purchase agreement files at least semiannually to assure that authorized procedures are being followed. Blanket purchase agreements shall be issued for a period of no longer than 12 months.</p>
<p>2105. Sole Source Procurements.</p>
<p>A. Application.</p> <p>The provisions of this Regulation shall apply to all sole source procurements unless emergency conditions exist as defined in Regulation 2110.</p>
<p>B. Exceptions.</p> <p>Sole source procurement is not permissible unless there is only a single supplier. The following are examples of circumstances which could necessitate sole source procurement:</p>
<p>(1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;</p>
<p>(2) where a sole supplier's item is needed for trial use or testing;</p>
<p>(3) [Repealed]</p>
<p>(4) [Repealed]</p>

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(5) where the item is one of a kind; and
(6) [Repealed]
The determination as to whether a procurement shall be made as a sole source shall be made by the President of Clemson University. In cases of reasonable doubt, competition should be solicited. Any determination by Clemson University that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.
2110. Emergency Procurements.
A. Application. The provisions of this Regulation apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.
B. Definition. An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by either the Chief Procurement Officer, the president of Clemson University or their designee. The existence of such conditions must create an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten: (1) the functioning of State government; (2) the preservation or protection of property; or (3) the health or safety of any person.
C. Limitations. Emergency procurement shall be limited to those supplies, services, or construction items necessary to meet the emergency.
D. Conditions. Any governmental body may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by the Chief Procurement Officer or the president of Clemson University shall be obtained prior to the procurement.
E. Selection of Method of Procurement. The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
F. General Procedures. Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.
G. Written Determination. The Chief Procurement Officer or his designee shall make a written determination stating the basis for an emergency

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procurement and for the selection of the particular contractor.
2125. Responsibility of Bidders and Offerors.
A. State Standards of Responsibility.
Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has:
(1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
(2) a satisfactory record of performance;
(3) a satisfactory record of integrity;
(4) qualified legally to contract with the State; and
(5) supplied all necessary information in connection with the inquiry concerning responsibility.
B. Duty of Contractor to Supply Information.
The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable.
C. Demonstration of Responsibility.
The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:
(1) evidence that such contractor possesses such necessary items;
(2) acceptable plans to subcontract for such necessary items; or
(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
D. Justification for Contract Award.
Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible.
E. Written Determination of Nonresponsibility.
If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer of the governmental body. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.
2140. Specifications.
A. Definitions.
(1) "Brand Name Specification" means a specification limited to one or more items by manufacturers' names or catalogue number.

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<p>(2) "Brand Name or Equal Specification" means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which provides for the submission of equivalent products.</p>
<p>(3) "Qualified Products List" means an approved list of supplies, services, or construction items described by model or catalogue number, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.</p>
<p>(4) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service or construction item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout the Regulations.</p>
<p>(5) "Specification for a Common or General Use Item" means a specification which has been developed and approved for repeated use in procurements.</p>
<p>B. Issuance of Specifications.</p> <p>The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for Clemson University's needs in a cost effective manner, taking into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of Clemson University that specifications permit maximum practicable competition consistent with this purpose. Specification shall be drafted with the objective of clearly describing the State's requirements. All specifications shall be written in a non-restrictive manner as to describe the requirements to be met.</p>
<p>C. Use of Functional or Performance Descriptions.</p> <p>Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of Clemson University. To facilitate the use of such criteria, Clemson University shall endeavor to include as a part of its purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.</p>
<p>D. Preference for Commercially Available Products.</p> <p>It is the general policy of this State to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.</p>
<p>2145. Construction, Architect-Engineer, Construction Management, and Land Surveying Services.</p>
<p>A. Method of Construction Contract Administration.</p> <p>This Subsection contains provisions applicable to the selection of the appropriate method of administration for construction contracts, that is, the contracting method and configuration which is most advantageous to Clemson University and will result in the most timely, economical, and otherwise successful completion of the construction project.</p>
<p>(1) Selecting the Method of Construction Contracting.</p> <p>In selecting the construction contracting method, Clemson University should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all appropriate and effective methods and their comparative</p>

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<p>advantages and disadvantages and how they might be adapted or combined to fulfill state requirements.</p>
<p>(2) Flexibility. Clemson University shall have sufficient flexibility in formulating the project delivery approach on a particular project to fulfill its needs. In each instance, consideration should be given to all the appropriate and effective means of obtaining both the design and construction of the project.</p>
<p>(3) Criteria for Selection. Before choosing the construction contracting method, a careful assessment must be made by Clemson University of requirements the project must satisfy and those other characteristics that would be in the best interest of Clemson University. The amount and type of financing available for the project is relevant to the selection of the appropriate construction contracting method including what sources of funding are available. Clemson University should consider whether a price can be obtained that is fair and reasonable when considered together with the benefit to Clemson University potentially obtainable from such a contract.</p>
<p>(4) Governmental Body Determination. Clemson University shall make a written determination that must be reviewed by the Chief Procurement Officer. The determination shall describe the construction contracting method chosen and set forth the facts and considerations which led to the selection of that method. This determination shall demonstrate that the requirements and financing of the project were all considered in making the selection.</p>
<p>2152. Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property. Lease, lease/purchase, installment purchase, or rental agreements are subject to the procedures of this Code and these Regulations.</p>