

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

3

4 CONFERENCE COMMITTEE REPORT ADOPTED -- NOT  
5 PRINTED

6 June 1, 2006

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**S. 572**

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10 Introduced by Senators Leatherman and Setzler

11

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13 Read the first time March 30, 2006.

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[572-1]

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**A BILL**

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,  
12 1976, BY ADDING SECTION 11-35-25 SO AS TO PROVIDE  
13 THAT THE SOUTH CAROLINA CONSOLIDATED  
14 PROCUREMENT CODE SUPERSEDES ANY OTHER  
15 CONFLICTING LAW; BY ADDING SECTION 11-35-3850 SO  
16 AS TO REDESIGNATE THE FORMER SECTION 11-35-4020  
17 PROVIDING FOR THE SALE OF UNSERVICEABLE  
18 MATERIALS AND EQUIPMENT BY A GOVERNMENTAL  
19 BODY; BY ADDING SECTION 11-35-4420 SO AS TO  
20 PROVIDE THAT THE CHIEF PROCUREMENT OFFICER  
21 AND THE AFFECTED LOCAL GOVERNMENTAL BODY  
22 HAVE THE OPPORTUNITY TO PARTICIPATE FULLY IN  
23 MATTERS PENDING BEFORE OR APPEALED FROM THE  
24 PROCUREMENT REVIEW PANEL; TO AMEND SECTIONS  
25 11-35-40, 11-35-45, 11-35-210, 11-35-310, 11-35-410, 11-35-450,  
26 11-35-510, 11-35-540, 11-35-710, 11-35-810, 11-35-820,  
27 11-35-830, 11-35-845, 11-35-1030, 11-35-1210, 11-35-1220,  
28 11-35-1230, 11-35-1240, 11-35-1410, 11-35-1510, 11-35-1520,  
29 ALL AS AMENDED, SECTIONS 11-35-1525 and 11-35-1528;  
30 AND SECTIONS 11-35-1530, 11-35-1550, 11-35-1560,  
31 11-35-1575, 11-35-1825, 11-35-2010, 11-35-2030, 11-35-2210,  
32 11-35-2410, 11-35-2440, 11-35-2710, 11-35-2720, 11-35-3020,  
33 11-35-3030, 11-35-3040, 11-35-3060, 11-35-3220, 11-35-3230,  
34 11-35-3240, 11-35-3245, 11-35-3410, 11-35-3510, 11-35-3820,  
35 11-35-3840, 11-35-4210, 11-35-4220, 11-35-4230, 11-35-4340,  
36 11-35-4410, 11-35-5220, 11-35-5230, 11-35-5240, 11-35-5260,  
37 AND 11-35-5270, ALL AS AMENDED, ALL RELATING TO  
38 THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT  
39 CODE, SO AS TO, AMONG OTHER THINGS, DELETE  
40 REFERENCES TO THE OFFICE OF GENERAL SERVICES OR  
41 DIVISION OF GENERAL SERVICES OF THE STATE  
42 BUDGET AND CONTROL BOARD AND REPLACE THEM

1 WITH THE TERMS "CHIEF PROCUREMENT OFFICER,"  
2 "DESIGNATED BOARD OFFICE," OR "DESIGNATED  
3 BOARD OFFICER," AND TO PROVIDE, FURTHER THAT  
4 THE CHIEF EXECUTIVE OFFICER OF THE BUDGET AND  
5 CONTROL BOARD DESIGNATE THE APPROPRIATE  
6 OFFICE OR SUBDIVISION OF THE BOARD OR OFFICER OR  
7 POSITION OF THE BOARD; TO REPLACE REFERENCES OF  
8 PROCUREMENT REQUIREMENTS FOR "GOODS AND  
9 SERVICES" WITH "SUPPLIES, SERVICES, AND  
10 INFORMATION TECHNOLOGY," REFINE AND CONFORM  
11 VARIOUS COMPETITIVE BIDDING MODES, TO INCREASE  
12 MAXIMUM DOLLAR THRESHOLDS IN SEVERAL  
13 INSTANCES, TO REDUCE THE POTENTIAL BIDDERS TO  
14 BE RANKED IN CERTAIN CONSTRUCTION CONTRACTS  
15 FROM FIVE TO THREE, TO REDUCE THE CONTRACT  
16 AMOUNT ALLOWING WAIVER OF A BOND AND  
17 SECURITY, AND TO ADJUST SMALL PURCHASE  
18 THRESHHOLDS AND AGENCY BASELINE  
19 CERTIFICATION; TO PROVIDE THAT A GOVERNMENTAL  
20 BODY HAVE A GOAL THAT TEN PERCENT OF ITS TOTAL  
21 DOLLAR AMOUNT OF PROCUREMENT FUNDS  
22 EXPENDED BE WITH A MINORITY BUSINESS  
23 ENTERPRISE AND TO INCREASE THE TAX CREDIT FOR  
24 DEALING WITH AN MBE TO FIFTY THOUSAND DOLLARS  
25 ANNUALLY OVER TEN YEARS; TO SHORTEN THE  
26 PROTEST DEADLINE; AND TO PROVIDE THAT THE CHIEF  
27 PROCUREMENT OFFICER AND AN AFFECTED  
28 GOVERNMENTAL BODY HAVE THE OPPORTUNITY TO  
29 PARTICIPATE FULLY IN A REVIEW OR APPEAL OF AN  
30 ADMINISTRATIVE OR LEGAL DECISION MADE  
31 PURSUANT TO THE PROCUREMENT CODE; TO AMEND  
32 SECTION 12-6-3350, RELATING TO TAX CREDITS FOR  
33 STATE CONTRACTORS AND SUBCONTRACTORS WITH  
34 MINORITY FIRMS, SO AS TO INCREASE THE CREDIT TO  
35 FIFTY THOUSAND DOLLARS ANNUALLY FOR TEN  
36 YEARS; AND TO REPEAL SUBARTICLE 11 OF ARTICLE 1,  
37 CHAPTER 35, TITLE 11 RELATING TO THE ACCEPTANCE  
38 OF GIFTS IN KIND OF ARCHITECTURAL AND  
39 ENGINEERING SERVICES BY A GOVERNMENTAL BODY;  
40 SECTION 11-35-1270, AS AMENDED, RELATING TO  
41 AUTHORITY TO CONTRACT FOR CERTAIN SERVICES,  
42 AND SUBARTICLE 5 OF ARTICLE 15, CHAPTER 35, TITLE

1 11 RELATING TO THE CONTINUATION OF CERTAIN  
2 PROVISIONS OF LAW.

3  
4 Be it enacted by the General Assembly of the State of South  
5 Carolina:

6  
7 SECTION 1. Article 1, Chapter 35, Title 11 of the 1976 Code is  
8 amended by adding:

9  
10 “Section 11-35-25. If this code applies to a procurement, the  
11 provisions of this code supersede all laws or parts of laws in  
12 conflict with it to the extent of the conflict including, but not  
13 limited to, the principles of law and equity, the common law, and  
14 the Uniform Commercial Code of this State.”

15  
16 SECTION 2. Subarticle 3, Article 15, Chapter 35, Title 11 of the  
17 1976 Code, is amended by adding:

18  
19 “Section 11-35-3850. Governmental bodies approved by the  
20 board may sell any supplies owned by it after ~~such~~ the supplies  
21 have become entirely unserviceable and can properly be classified  
22 as ‘junk’, in accordance with procedures established by the ~~Office~~  
23 ~~of General Services~~ designated board office. All sales of  
24 unserviceable supplies by the governmental body ~~shall~~ must be  
25 made in public to the highest bidder, after advertising for fifteen  
26 days, and the funds from ~~such~~ the sales ~~shall~~ must be credited to  
27 the account of the governmental body owning and disposing of  
28 ~~such~~ the unserviceable supplies.”

29  
30 SECTION 3. Subarticle 3, Article 17, Chapter 35, Title 11 of the  
31 1976 Code is amended by adding:

32  
33 “Section 11-35-4420. The appropriate chief procurement  
34 officer and an affected governmental body shall have the  
35 opportunity to participate fully as a party in a matter pending  
36 before the Procurement Review Panel and in an appeal of a  
37 decision of the Procurement Review Panel, whether administrative  
38 or judicial.”

39  
40 SECTION 4. Section 11-35-40(2) of the 1976 Code, as last  
41 amended by Act 153 of 1997, is further amended to read:

42

1 “(2) Application to State Procurement. This code ~~shall apply~~  
2 applies to every procurement or expenditure of funds by this State  
3 under contract acting through a governmental body as herein  
4 defined irrespective of the source of the funds, including federal  
5 assistance monies, except as specified in Section 11-35-40(3)  
6 (Compliance with Federal Requirements) and except that this code  
7 does not apply to gifts, to the issuance of grants, or to contracts  
8 between public procurement units, except as provided in Article 19  
9 (Intergovernmental Relations). It shall also apply to the disposal of  
10 state supplies as provided in Article 15 (Supply Management). ~~The~~  
11 ~~provisions of this code shall apply to all procurements of~~  
12 ~~information technology elements by any governmental body,~~  
13 ~~irrespective of the source funds whether appropriated or not.”~~  
14

15 SECTION 5. Section 11-35-45(A) of the 1976 Code, as last  
16 amended by Act 153 of 1997, is further amended to read:

17  
18 “(A)All vouchers for payment of purchases of ~~goods or~~  
19 services, supplies, or information technology shall must be  
20 delivered to the Comptroller General’s office within thirty work  
21 days from acceptance of the goods or services and proper invoice.  
22 After the thirtieth work day, following acceptance or the postmark  
23 on the invoice, the Comptroller General shall levy an amount not  
24 to exceed fifteen percent ~~per annum~~ each year from the funds  
25 available to the agency, ~~such~~ this amount to be applied to the  
26 unpaid balance to be remitted to the vendor unless the vendor  
27 waives imposition of the interest penalty.”  
28

29 SECTION 6. Section 11-35-210 of the 1976 Code, as last  
30 amended by Act 153 of 1997, is further amended to read:

31  
32 “Section 11-35-210. Written determinations ~~and findings~~  
33 expressly required by the code or regulations shall must be  
34 retained in an official contract file of the governmental body  
35 administering the contract. ~~Such~~ These determinations shall must  
36 be documented in sufficient detail to satisfy the requirements of  
37 audit as provided ~~for~~ in Section 11-35-1230.”  
38

39 SECTION 7. Section 11-35-310(8), (17), (19), (20), (24), (28),  
40 (35), and (36) of the 1976 Code, as last amended by Act 356 of  
41 2002, is further amended to read:  
42

1 “(8) ‘Contract’ means all types of state agreements, regardless  
2 of what they may be called, for the procurement or disposal of  
3 supplies, services, information technology, or construction.

4 (17) ~~‘General Services’ means the Office of the Budget and  
5 Control Board. (Reserved)~~

6 (19) ‘Grant’ means the furnishing by the State or the United  
7 States government of assistance, whether financial or otherwise, to  
8 ~~any~~ a person to support a program authorized by law. It does not  
9 include an award, the primary purpose of which is to procure  
10 specified end products, whether in the form of supplies, services,  
11 information technology, or construction. A contract resulting from  
12 such an award ~~shall~~ must not be ~~deemed~~ considered a grant but a  
13 procurement contract.

14 (20) ‘Invitation for bids’ means a written or published  
15 solicitation issued by an authorized procurement officer for bids to  
16 contract for the procurement or disposal of stated supplies,  
17 services, information technology, or construction, which will  
18 ordinarily result in the award of the contract to the responsible  
19 bidder making the lowest responsive bid.

20 (24) ‘Procurement’ means buying, purchasing, renting, leasing,  
21 or otherwise acquiring any supplies, services, information  
22 technology, or construction. It also includes all functions that  
23 pertain to the obtaining of any supply, service, or construction,  
24 including description of requirements, selection, and solicitation of  
25 sources, preparation and award of contracts, and all phases of  
26 contract administration.

27 (28) ‘Request for proposals (RFP)’ means a written or published  
28 solicitation issued by an authorized procurement officer for  
29 proposals to provide supplies, ~~or~~ services, information technology,  
30 or construction which ordinarily result in the award of the contract  
31 to the responsible bidder making the proposal determined to be  
32 most advantageous to the State. The award of the contract must be  
33 made on the basis of evaluation factors ~~which~~ that must be stated  
34 in the RFP.

35 (35) ‘Term contract’ means ~~a contract~~ contracts established by  
36 the chief procurement officer for a specific ~~product or service~~  
37 supplies, services, or information technology for a specified time  
38 and for which it is mandatory that all governmental bodies procure  
39 their requirements ~~for the goods and services~~ during its term. ~~If a~~  
40 ~~governmental body~~ As provided in the solicitation, if a public  
41 procurement unit is offered ~~goods and services~~ the same supplies,  
42 services, or information technology at a price that is at least ten  
43 percent less than the term contract price ~~for the same goods or~~

1 services, it may purchase from the vendor offering the lower price  
2 after first offering the vendor holding the term contract the option  
3 to meet the lower price. The solicitation used to establish the term  
4 contract must specify contract terms applicable to a purchase from  
5 the vendor offering the lower price. If the vendor holding the term  
6 contract meets the lower price, then the governmental body ~~must~~  
7 shall purchase from the contract vendor. All decisions to purchase  
8 from the vendor offering the lower price must be documented by  
9 the procurement officer in sufficient detail to satisfy the  
10 requirements of an external audit. A term contract may be a  
11 multi-term contract as provided in Section 11-35-2030.

12 (36) ‘Using agency’ means any governmental body of the State  
13 which utilizes any supplies, services, information technology, or  
14 construction purchased under this code.”

15

16 SECTION 8. Section 11-35-310 of the 1976 Code, as last  
17 amended by Act 356 of 2002, is further amended by adding:

18

19 “(37) ‘Designated board office’ and ‘Designated board officer’  
20 means the office or officer designated in accordance with Section  
21 11-35-540(5).”

22

23 SECTION 9. Section 11-35-410 of the 1976 Code, as last  
24 amended by Act 153 of 1997, is further amended to read:

25

26 “Section 11-35-410. (A) Procurement information ~~shall~~ must  
27 be a public record to the extent required by Chapter 4 of Title 30  
28 (The Freedom of Information Act) with the exception that  
29 commercial or financial information obtained in response to a  
30 ‘request for proposals’ or any type of bid solicitation ~~which~~ that is  
31 privileged and confidential need not be disclosed.

32 (B) Privileged and confidential information is information in  
33 specific detail not customarily released to the general public, the  
34 release of which might cause harm to the competitive position of  
35 the party supplying the information. Examples of this type of  
36 information ~~would~~ include:

37

(1) customer lists;

38

(2) design recommendations and identification of  
39 prospective problem areas under an RFP;

40

(3) design concepts, including methods and procedures;

41

(4) biographical data on key employees of the bidder.

1 (C) For all documents submitted in response or with regard to a  
2 solicitation or other request, the documents need not be disclosed if  
3 an award is not made.

4 (D) Evaluative documents predecisional in nature such as  
5 inter-agency or intra-agency memoranda containing technical  
6 evaluations and recommendations are exempted so long as the  
7 contract award does not expressly adopt or incorporate the  
8 inter-agency or intra-agency memoranda reflecting the  
9 predecisional deliberations.

10 ~~(E) At the time of submitting a proposal or bid, the party~~  
11 ~~supplying a bid or proposal must identify any portions of the~~  
12 ~~proposal or bid considered by the party to be a trade secret and~~  
13 ~~thus eligible to be withheld from public inspection and copying. If~~  
14 ~~the information identified by the party is a trade secret, as defined~~  
15 ~~in Section 30 4 40(a)(1), it may be withheld from public~~  
16 ~~inspection and copying. If the party fails to identify information as~~  
17 ~~a trade secret, the entire bid or proposal is to be made available for~~  
18 ~~public inspection and copying. For all documents submitted in~~  
19 response or with regard to any solicitation or other request, the  
20 person submitting the documents shall comply with instructions  
21 provided in the solicitation for marking information exempt from  
22 public disclosure. Information not marked as required by the  
23 applicable instructions may be disclosed to the public.”  
24

25 SECTION 10. The first paragraph of Section 11-35-450(A) of  
26 the 1976 Code, as last amended by Act 153 of 1997, is further  
27 amended to read:

28  
29 “The purchase of furniture, floor coverings, wall coverings, or  
30 ~~any~~ other decorative or ornamental item by a governmental body  
31 ~~for at least one of the following uses~~ must be reported to the  
32 governing board, commission, or council of the respective  
33 governmental body before the purchase, when the cost of the  
34 furniture, covering, or item exceeds five hundred one thousand  
35 dollars, before the purchase and it is to be used in:

36 (1) an office or adjoining reception area utilized by an  
37 agency director or assistant agency director; or

38 (2) a board room or a conference room used as a board  
39 room.”

40  
41 SECTION 11. Section 11-35-510 of the 1976 Code, as last  
42 amended by Act 153 of 1997, is further amended to read:

43



1 “Section 11-35-510. All rights, powers, duties, and authority  
2 relating to the procurement of supplies, services, and information  
3 technology and to the management, control, warehousing, sale and  
4 disposal of supplies, construction, information technology, and  
5 services now vested in or exercised by ~~any a~~ state governmental  
6 body ~~under~~ pursuant to the provisions of law relating thereto, and  
7 regardless of source of funding, are hereby vested in the ~~Office of~~  
8 ~~General Services~~ appropriate chief procurement officer. This  
9 vesting of authority ~~shall be~~ is subject to Sections 11-35-710  
10 (Exemptions), 11-35-1250 (Authority to Contract for Auditing  
11 Services), 11-35-1260 (Authority to Contract for Legal Services),  
12 ~~11-35-1270 (Authority to Contract for Certain Services)~~, Section  
13 11-35-1550 (Small Purchases), Section 11-35-1570 (Emergency  
14 Procurements), 11-35-3230 (Exception for Small  
15 Architect-Engineer, and Land Surveying Services Contracts), and  
16 Section 11-35-3620 (Management of Warehouses and Inventory).”

17  
18 SECTION 12. Section 11-35-540 of the 1976 Code, as last  
19 amended by Act 153 of 1997, is further amended to read:

20  
21 “Section 11-35-540. (1) Authority to Promulgate Regulations.  
22 Except as otherwise provided in this code, the board ~~shall have the~~  
23 ~~authority and responsibility to~~ may promulgate regulations,  
24 consistent with this code, governing the procurement,  
25 management, control, and disposal of ~~any and~~ all supplies,  
26 services, information technology, and construction to be procured  
27 by the State. ~~Such~~ These regulations ~~shall be~~ are binding in all  
28 procurements made by the State.

29 (2) Nondelegation. The board ~~shall~~ may not delegate its power  
30 to promulgate regulations.

31 (3) Approval of Operational Procedures. Governmental bodies  
32 ~~shall be authorized to~~ develop internal operational procedures  
33 consistent with this code; ~~provided except~~, that ~~such the~~  
34 operational procedures ~~shall~~ must be ~~certified~~ approved in writing  
35 by the appropriate chief procurement officer ~~as being consistent~~  
36 ~~with this chapter~~. The operational procedures must be consistent  
37 with this chapter. Operational procedures adopted pursuant to this  
38 chapter are exempt from the requirements of Section 1-23-140.

39 (4) The board ~~as a whole or acting through its procurement~~  
40 ~~policy committee~~ shall consider and decide matters of policy  
41 within the provisions of this code including those referred to it by  
42 the chief procurement officers. The board ~~shall have~~ has the

1 power to audit and monitor the implementation of its regulations  
2 and the requirements of this code.

3 (5) For every reference in this code to a ‘designated board  
4 office’, the chief executive officer of the board shall designate the  
5 office or other subdivision of the board that is responsible for the  
6 referenced statutory role. For every reference in this code to a  
7 ‘designated board officer’, the chief executive officer of the board  
8 shall designate the board officer or other board position that is  
9 responsible for the referenced statutory role. More than one office  
10 or officer may be designated for any referenced statutory role. All  
11 designations pursuant to this subparagraph must be submitted in  
12 writing to the chief procurement officers.”

13  
14 SECTION 13. Section 11-35-710 of the 1976 Code, as last  
15 amended by Act 264 of 2000, is further amended to read:

16  
17 “Section 11-35-710. The board, upon the recommendation of  
18 the ~~Office of General Services~~ designated board office, may  
19 exempt governmental bodies from purchasing certain items  
20 through the respective chief procurement officer’s area of  
21 responsibility. The board may exempt specific supplies, ~~or~~  
22 services, information technology, or construction from the  
23 purchasing procedures required in this ~~section~~ chapter and for just  
24 cause by unanimous written decision limit or may withdraw  
25 exemptions provided for in this section. The following exemptions  
26 are granted ~~in~~ from this chapter:

27 (1) the construction, maintenance, and repair of bridges,  
28 highways, and roads; vehicle and road equipment maintenance  
29 and repair; and ~~any other emergency-type~~ emergency-type parts or  
30 equipment utilized by the Department of Transportation or the  
31 Department of Public Safety;

32 (2) the purchase of raw materials by the South Carolina  
33 Department of Corrections, Division of Prison Industries;

34 (3) ~~S.C.~~ South Carolina State Ports Authority;

35 (4) Division of Public Railways of the Department of  
36 Commerce;

37 (5) ~~S.C.~~ South Carolina Public Service Authority;

38 (6) expenditure of funds at state institutions of higher  
39 learning derived wholly from athletic or other student contests,  
40 from the activities of student organizations, and from the operation  
41 of canteens and bookstores, except as the funds are used for the  
42 procurement of construction, architect-engineer,  
43 construction-management, and land surveying services;

- 1 (7) livestock, feed, and veterinary supplies;  
2 (8) articles for commercial sale by all governmental bodies;  
3 (9) fresh fruits, vegetables, meats, fish, milk, and eggs;  
4 (10) South Carolina Arts Commission and South Carolina  
5 Museum Commission for the purchase of one-of-a-kind items such  
6 as paintings, antiques, sculpture, and similar objects. Before ~~any~~ a  
7 governmental body procures the objects, the head of the  
8 purchasing agency shall prepare a written determination specifying  
9 the need for the objects and the benefits to the State. The South  
10 Carolina Arts Commission shall review the determination and  
11 forward a recommendation to the board for approval;  
12 (11) published books, periodicals, and technical pamphlets;  
13 (12) South Carolina Research Authority;  
14 (13) the purchase of ~~goods, products, and services~~ supplies,  
15 services, or information technology by state offices, departments,  
16 institutions, agencies, boards, and commissions or the political  
17 subdivisions of this State from the South Carolina Department of  
18 Corrections, Division of Prison Industries;  
19 (14) Medical University Hospital Authority, ~~provided~~ if the  
20 Medical University Hospital Authority has promulgated a  
21 procurement process in accordance with its enabling provision.”  
22

23 SECTION 14. Section 11-35-810 of the 1976 Code, as last  
24 amended by Act 153 of 1997, is further amended to read:  
25

26 “Section 11-35-810. There is ~~hereby~~ created, within the ~~Office~~  
27 ~~of General Services~~ board, a Materials Management Office to be  
28 headed by the Materials Management Officer.”  
29

30 SECTION 15. Section 11-35-820 of the 1976 Code, as last  
31 amended by Act 153 of 1997, is further amended to read:  
32

33 “Section 11-35-820. There is ~~hereby~~ created within the ~~Office~~  
34 ~~of General Services~~ board, the Information Technology  
35 Management Office to be headed by the Information Technology  
36 Management Officer. All procurements involving information  
37 technology, and any pre-procurement and post-procurement  
38 activities in this area, ~~shall~~ must be conducted in accordance with  
39 the regulations promulgated by the board, except as otherwise  
40 provided ~~for~~ in this code by specific reference to the Information  
41 Technology Management Office.”  
42

1 SECTION 16. Section 11-35-830 of the 1976 Code, as last  
2 amended by Act 153 of 1997, is further amended to read:

3

4 “Section 11-35-830. There is ~~hereby~~ created within the ~~Office~~  
5 ~~of General Services board~~, the State Engineer’s Office to be  
6 headed by the State Engineer. All procurements involving  
7 construction, architectural and engineering, construction  
8 management, and land surveying services, as defined in Section  
9 11-35-2910, and any pre-procurement and post-procurement  
10 activities in this area, ~~shall~~ must be conducted in accordance with  
11 the ‘Manual for Planning and Execution of State Permanent  
12 Improvements’ and with any regulations promulgated by the  
13 board, ~~except as~~ unless otherwise provided ~~for~~ in this code by  
14 specific reference to the State Engineer’s Office.”

15

16 SECTION 17. Section 11-35-845 of the 1976 Code, as last  
17 amended by Act 153 of 1997, is further amended to read:

18

19 “Section 11-35-845. Each agency of state government that has  
20 total management capability as defined and certified by the ~~Office~~  
21 ~~of General Services~~ State Engineer’s Office must be allowed  
22 to oversee the administration of ~~permanent improvement~~  
23 construction projects with the State Engineer’s Office serving as an  
24 audit function. The State Engineer’s Office shall assist those small  
25 agencies who do not have the necessary expertise in permanent  
26 improvements.”

27

28 SECTION 18. Section 11-35-1030 of the 1976 Code, as last  
29 amended by Act 153 of 1997, is further amended to read:

30

31 “Section 11-35-1030. ~~The Office of General Services~~ chief  
32 procurement officers ~~shall~~ develop a system of training for  
33 procurement in accordance with regulations by the board. ~~Such~~  
34 The training ~~shall~~ must encompass the latest techniques and  
35 methods of public procurement. If ~~deemed~~ considered appropriate  
36 by the ~~Office of General Services~~ chief procurement officers, ~~such~~  
37 the training shall must include a requirement for the certification of  
38 the procurement officer of each purchasing agency.”

39

40 SECTION 19. Section 11-35-1210(1) of the 1976 Code, as last  
41 amended by Act 153 of 1997, is further amended to read:

42

1 “(1) Authority. The board may assign differential dollar limits  
2 below which individual governmental bodies may make direct  
3 procurements not under term contracts. The ~~Office of General~~  
4 ~~Services~~ designated board office shall review the respective  
5 governmental body’s internal procurement operation, shall certify  
6 in writing that it is consistent with the provisions of this code and  
7 the ensuing regulations, and recommend to the board those dollar  
8 limits for the respective governmental body’s procurement not  
9 under term contract.”

10

11 SECTION 20. Section 11-35-1220 of the 1976 Code, as last  
12 amended by Act 153 of 1997, is further amended to read:

13

14 “Section 11-35-1220. The ~~Office of General Services~~ shall chief  
15 procurement officers are authorized to prepare statistical data  
16 concerning the procurement, use, and disposition of all supplies,  
17 services, information technology, and construction. All using  
18 agencies shall furnish ~~such these~~ reports as the ~~Office of General~~  
19 ~~Services~~ chief procurement officers may require concerning use,  
20 needs, and stocks on hand, and the chief procurement officers shall  
21 prescribe forms to be used by the using agencies in requisitioning,  
22 ordering, and reporting supplies, services, information technology,  
23 and construction. The chief procurement officers shall limit  
24 requests for information to those items necessary for the effective  
25 operation of the purchasing system, but using agencies ~~shall~~ must  
26 be required to provide information as requested.”

27

28 SECTION 21. Section 11-35-1230(1) of the 1976 Code, as last  
29 amended by Act 153 of 1997, is further amended to read:

30

31 “(1) The ~~Office of General Services~~ designated board office,  
32 through consultation with the chief procurement officers, shall  
33 develop written plans for the auditing of state procurements.

34 In procurement audits of governmental bodies thereafter, the  
35 auditors from the ~~Office of General Services~~ designated board  
36 office shall review the adequacy of the system’s internal controls  
37 in order to ensure compliance with the requirement of this code  
38 and the ensuing regulations. ~~Any~~ A noncompliance discovered  
39 through audit must be transmitted in management letters to the  
40 audited governmental body and the Budget and Control Board.  
41 The auditors shall provide in writing proposed corrective action to  
42 governmental bodies. Based upon audit recommendations of the  
43 ~~Office of General Services~~ designated board office, the board may

1 revoke certification as provided ~~for~~ in Section 11-35-1210 and  
2 require the governmental body to make all procurements through  
3 the ~~office of materials management~~ appropriate chief procurement  
4 officer above a dollar limit set by the board, until such time as the  
5 board is assured of compliance with this code and its regulations  
6 by that governmental body.”

7  
8 SECTION 22. Section 11-35-1240 of the 1976 Code, as last  
9 amended by Act 153 of 1997, is further amended to read:

10  
11 “Section 11-35-1240. (A) The board shall prescribe  
12 administrative penalties for violation of the provisions of this code  
13 and of regulations promulgated ~~thereunder~~ under it, excluding  
14 those matters under the jurisdiction of the Ethics Commission as  
15 provided by law.

16 (B) Violation of these provisions ~~shall be~~ is grounds for loss of  
17 or reduction in authority delegated by either the board or this  
18 code.”

19  
20 SECTION 23. Section 11-35-1410(2)(c) and (4) of the 1976  
21 Code, as last amended by Act 153 of 1997, is further amended to  
22 read:

23  
24 “(c) states prices at which sales are currently or were last made  
25 to a significant number of buyers constituting the general buying  
26 public for the supplies, ~~or~~ services, or information technology  
27 involved.

28 (4) ‘Purchase description’ means specifications or ~~any~~ other  
29 document describing the supplies, services, information  
30 technology, or construction to be procured.”

31  
32 SECTION 24. Section 11-35-1510 of the 1976 Code, as last  
33 amended by Act 387 of 2000, is further amended to read:

34  
35 “Section 11-35-1510. Unless otherwise provided by law, all  
36 state contracts ~~shall~~ must be awarded by competitive sealed  
37 bidding, pursuant to Section 11-35-1520, except as provided in:

38 (1) Section 11-35-1250 (Authority to Contract for Auditing  
39 Services);

40 (2) Section 11-35-1260 (Authority to Contract for Legal  
41 Services);

42 (3) Section 11-35-1525 (Fixed Priced Bidding);

- 1       ~~(2)~~(4) Section 11-35-1528 (Competitive Best Value  
2 Bidding);  
3       ~~(3)~~ Section 11-35-1250 (Authority to Contract for Auditing  
4 Services);  
5       ~~(4)~~ Section 11-35-1260 (Authority to Contract for Legal  
6 Services);  
7       ~~(5)~~ Section 11-35-1270 (Authority to Contract for Certain  
8 Services) Section 11-35-1529 (Competitive On-line Bidding);  
9       (6) Section 11-35-1530 (Competitive Sealed Proposals);  
10       (7) Section 11-35-1540 (Negotiations After Unsuccessful  
11 Competitive Sealed Bidding);  
12       (8) Section 11-35-1550 (Small Purchases);  
13       (9) Section 11-35-1560 (Sole Source Procurements);  
14       (10) Section 11-35-1570 (Emergency Procurements);  
15       (11) Section 11-35-1575 (~~Procurements at~~ Participation in  
16 Auction or Bankruptcy Sale);  
17       ~~(12) Section 11-35-1580 (Procurement of Information~~  
18 ~~Technology); (Reserved)~~  
19       (13) Section 11-35-3020 (Construction Procurement  
20 Procedures);  
21       (14) Section 11-35-3220 (Architect-Engineer, Construction  
22 Management and Land Surveying Services Procurement  
23 Procedures);  
24       (15) Section 11-35-3230 (Exception for Small  
25 Architect-Engineer and Land Surveying Services Contracts)  
26       ~~(16) Section 11-35-1529 (Competitive On-line Bidding)."~~  
27

28 SECTION 25. Section 11-35-1520 of the 1976 Code, as last  
29 amended by Act 153 of 1997, is further amended to read:

30  
31       "Section 11-35-1520. (1) Condition for Use. Contracts  
32 ~~amounting to twenty five~~ greater than fifty thousand dollars ~~or~~  
33 ~~more shall~~ must be awarded by competitive sealed bidding except  
34 as otherwise provided in Section 11-35-1510.

35       (2) Invitation for Bids. An invitation for bids ~~shall~~ must be  
36 issued in an efficient and economical manner and ~~shall~~ must  
37 include specifications and all contractual terms and conditions  
38 applicable to the procurement.

39       (3) Notice. Adequate notice of the invitation for bids ~~shall~~  
40 must be given at a reasonable time ~~prior to~~ before the date set forth  
41 ~~therein in it~~ for the opening of bids. ~~Such~~ The notice ~~shall~~ must  
42 include publications in ~~a newspaper of general circulation in the~~  
43 ~~State such as 'South Carolina Business Opportunities' or through a~~

1 means of central electronic advertising as approved by the ~~Office~~  
2 ~~of General Services~~ designated board office. Governmental bodies  
3 may charge vendors the cost incurred for copying and mailing bid  
4 or proposal documents requested in response to a procurement.

5 (4) Receipt and Safeguarding of Bids. All bids, ~~(including~~  
6 ~~modifications)~~, received ~~prior to~~ before the time of opening ~~shall~~  
7 must be kept secure and unopened, except as provided ~~for~~ by  
8 regulation of the board.

9 (5) Bid Opening. Bids ~~shall~~ must be opened publicly in the  
10 presence of one or more witnesses, at the time and place  
11 designated in the invitation for bids and in the manner prescribed  
12 by regulation of the board. The amount of each bid, and ~~such~~ other  
13 relevant information as may be specified by regulation, together  
14 with the name of each bidder, ~~shall~~ must be tabulated. The  
15 tabulation ~~shall~~ must be open to the public inspection at that time.

16 (6) Bid Acceptance and Bid Evaluation. Bids ~~shall~~ must be  
17 accepted unconditionally without alteration or correction, except as  
18 otherwise authorized in this code. The invitation for bids ~~shall~~  
19 must set forth the evaluation criteria to be used. ~~No criteria may~~  
20 Criteria must not be used in bid evaluation that are not ~~set forth~~ in  
21 the invitation for bids. Bids ~~shall~~ must be evaluated based on the  
22 requirements ~~set forth~~ in the invitation for bids and in accordance  
23 with the regulations of the board.

24 (7) Correction or Withdrawal of Bids; Cancellation of  
25 Awards. Correction or withdrawal of inadvertently erroneous bids  
26 before bid opening, withdrawal of inadvertently erroneous bids  
27 after award, or cancellation and reaward of awards or contracts,  
28 after award but ~~prior to~~ before performance, may be permitted in  
29 accordance with regulations promulgated by the board. After bid  
30 opening, ~~no~~ changes in bid prices or other provisions of bids  
31 prejudicial to the interest of the State or fair competition ~~shall~~ must  
32 not be permitted. After opening, bids must not be corrected or  
33 withdrawn except in accordance with the provisions of this code  
34 and the regulations promulgated pursuant to it. Except as  
35 otherwise provided by regulation, all decisions to permit the  
36 correction or withdrawal of bids, or to cancel awards, or contracts,  
37 after award but ~~prior to~~ before performance, ~~shall~~ must be  
38 supported by a written determination of appropriateness made by  
39 the chief procurement officers or head of a purchasing agency.

40 (8) Discussion with Bidders. As provided in the invitation  
41 for bids, discussions may be conducted with apparent responsive  
42 bidders for the purpose of clarification to assure full understanding  
43 of the requirements of the invitation for bids. All bids, in the



1 procuring agency's sole judgment, needing clarification ~~shall~~ must  
2 be accorded ~~such an~~ that opportunity. Clarification of ~~any a~~  
3 bidder's bid must be documented in writing by the procurement  
4 officer and ~~shall~~ must be included with the bid. Documentation  
5 concerning the clarification ~~shall~~ must be subject to disclosure  
6 upon request as required by Section 11-35-410.

7 (9) Tie Bids. If two or more bidders are tied in price while  
8 otherwise meeting all of the required conditions, awards are  
9 determined ~~as follows~~ in the following order of priority:

10 (a) If there is a South Carolina firm tied with an  
11 out-of-state firm, the award must be made automatically to the  
12 South Carolina firm.

13 (b) Tie bids involving South Carolina produced or  
14 manufactured products, when known, and items produced or  
15 manufactured out of the State must be resolved in favor of the  
16 South Carolina commodity.

17 (c) Tie bids involving a business certified by the South  
18 Carolina Office of Small and Minority Business Assistance as a  
19 Minority Business Enterprise must be resolved in favor of the  
20 Minority Business Enterprise.

21 (d) Tie bids involving South Carolina firms must be resolved  
22 in favor of the South Carolina firm located in the same taxing  
23 jurisdiction as the governmental body's consuming location.

24 ~~(d) Tie bids involving South Carolina firms in the same~~  
25 ~~taxing jurisdiction as the governmental body's consuming location~~  
26 ~~must be resolved by the flip of a coin in the office of the chief~~  
27 ~~procurement officer or the head of a purchasing agency or either~~  
28 ~~officer's designee witnessed by all interested parties.~~

29 (e) In all other situations ~~where~~ in which bids are tied, the  
30 award ~~will~~ must be made ~~by the purchasing agency~~ to the tied  
31 bidder offering the quickest delivery time, or if the tied bidders  
32 have offered the same delivery time, the tie ~~shall~~ must be resolved  
33 by the flip of a coin ~~in the office of the chief procurement officer~~  
34 ~~or the head of a purchasing agency or either officer's designee~~  
35 ~~witnessed by all interested parties~~ the procurement officer. All  
36 responding vendors must be invited to attend.

37 (10) Award. Unless there is a compelling reason to reject  
38 bids as prescribed by regulation of the board, notice of an award or  
39 an intended award of a contract to the lowest responsive and  
40 responsible bidders whose bid meets the requirements set forth in  
41 the invitation for bids ~~shall~~ must be given by posting ~~such~~ the  
42 notice at a location specified in the invitation for bids. For  
43 contracts with a total or potential value in excess of fifty thousand

1 dollars but less than one hundred thousand dollars, notice of the  
2 award of a contract must be given by posting and must be sent to  
3 all bidders responding to the solicitation on the same day that the  
4 notice is posted in accordance with this section. For contracts with  
5 a total or potential value of one hundred thousand dollars or  
6 greater, notice of an intended award of a contract must be given by  
7 posting the notice for ten days before entering into a contract and  
8 must be sent to all bidders responding to the solicitation on the  
9 same day that the notice is posted in accordance with this section.  
10 The posting date shall appear on the face of all these notices. ~~Prior~~  
11 ~~to~~ Before the posting of the award, the procuring agency may  
12 negotiate with the lowest responsive and responsible bidder to  
13 lower his bid within the scope of the invitation for bids. The  
14 invitation for bids and ~~the posted notice~~ a notice of award or notice  
15 of intent to award must contain a statement of a bidder's right to  
16 protest ~~under pursuant to~~ Section 11-35-4210(1) and the date and  
17 location of posting must be announced at bid opening. When a  
18 contract has a total or potential value in excess of fifty thousand  
19 dollars, in addition to the posted notice, notice of an intended  
20 award must be given to all bidders responding to the solicitation,  
21 except when only one response is received. Such notice must  
22 contain a statement of the bidder's right to protest under Section  
23 11-35-4210(1).

24 ~~When a contract has a total or potential value in excess of fifty~~  
25 ~~thousand dollars, sixteen days after notice is given the agency may~~  
26 ~~enter a contract with the bidder named in the notice in accordance~~  
27 ~~with the provisions of this code and of the bid solicited. When~~  
28 ~~only one response is received, the notice of intended intent to~~  
29 ~~award and the sixteen day delay of award may be waived. A~~  
30 ~~determination of responsibility must be made before award in~~  
31 ~~accordance with Section 11-35-1810.~~

32 (11) Request for Qualifications. (a) ~~Prior~~ to Before  
33 soliciting bids, the procuring agency, acting through the authorized  
34 procurement officer, may issue a request for qualifications from  
35 prospective bidders. ~~Such~~ The request shall must contain, at a  
36 minimum, a description of the ~~goods or services~~ scope of work to  
37 be solicited by the invitation for bids, the general scope of the  
38 work, the deadline for submission of information, and how  
39 prospective bidders may apply for consideration. The request shall  
40 must require information concerning the prospective bidders'  
41 product specifications, qualifications, experience, and ability to  
42 perform the requirements of the contract. Adequate public notice  
43 of the request for qualifications shall must be given in the manner

1 provided in Section 11-35-1520(3). ~~The use of the request for~~  
2 ~~qualifications is subject to the approval of the Office of General~~  
3 ~~Services.~~

4 (b) After receipt of the responses to the request for  
5 qualifications from prospective bidders, the ~~prospective bidders~~  
6 ~~shall be ranked~~ rank of the prospective bidders must be determined  
7 in writing from most qualified to least qualified on the basis of the  
8 information provided. Bids ~~shall~~ then must be solicited from at  
9 least the top two prospective bidders by means of an invitation for  
10 bids. ~~The failure of a prospective bidder to be selected to receive~~  
11 ~~the invitation for bids shall not be grounds for protest under~~  
12 ~~Section 11-35-4210. The determination regarding how many bids~~  
13 ~~to solicit is not subject to review under Article 17.~~

14 (12) ~~Provisions Not to Apply. The provisions of this section~~  
15 ~~shall not apply to maintenance services for aircraft of the Division~~  
16 ~~of Aeronautics of the Department of Commerce. (Reserved)~~

17 (13) Minor Informalities and Irregularities in Bids. A minor  
18 informality or irregularity is one which is merely a matter of form  
19 or is some immaterial variation from the exact requirements of the  
20 invitation for bids having no effect or merely a trivial or negligible  
21 effect on total bid price, quality, quantity, or delivery of the  
22 supplies or performance of the contract, and the correction or  
23 waiver of which would not be prejudicial to bidders. The  
24 procurement officer shall either give the bidder an opportunity to  
25 cure any deficiency resulting from a minor informality or  
26 irregularity in a bid or waive any such deficiency when it is to the  
27 advantage of the State. Such communication or determination  
28 shall be in writing. Examples of minor informalities or  
29 irregularities include, but are not limited to:

30 (a) failure of a bidder to return the number of copies of  
31 signed bids required by the solicitation;

32 (b) failure of a bidder to furnish the required information  
33 concerning the number of the bidder's employees or failure to  
34 make a representation concerning its size;

35 (c) failure of a bidder to sign its bid, but only if the firm  
36 submitting the bid has formally adopted or authorized the  
37 execution of documents by typewritten, printed, or rubber stamped  
38 signature and submits evidence of ~~such~~ that authorization, and the  
39 bid carries ~~such~~ a that signature or the unsigned bid is  
40 accompanied by other material indicating the bidder's intention to  
41 be bound by the unsigned document, such as the submission of a  
42 bid guarantee with the bid or a letter signed by the bidder with the  
43 bid referring to and identifying the bid itself;

1 (d) failure of a bidder to acknowledge receipt of an  
2 amendment to a solicitation, but only if:

3 (i) the bid received indicates in some way that the  
4 bidder received the amendment, such as where the amendment  
5 added another item to the solicitation and the bidder submitted a  
6 bid, ~~thereon, provided that~~ on it, if the bidder states under oath that  
7 it received the amendment ~~prior to~~ before bidding and that the  
8 bidder will stand by its bid price; or;

9 (ii) the amendment has no effect on price or quantity or  
10 merely a trivial or negligible effect on quality or delivery, and is  
11 not prejudicial to bidders, such as an amendment correcting a  
12 typographical mistake in the name of the governmental body;

13 (e) failure of a bidder to furnish an affidavit concerning  
14 affiliates;

15 (f) failure of a bidder to execute the certifications with  
16 respect to equal opportunity and affirmative action programs;

17 (g) failure of a bidder to furnish cut sheets or product  
18 literature;

19 (h) failure of a bidder to furnish certificates of insurance;

20 (i) failure of a bidder to furnish financial statements;

21 (j) failure of a bidder to furnish references;

22 (k) failure of a bidder to furnish its bidder number; and

23 (l) notwithstanding ~~Section 40-11-180~~ Title 40, the  
24 failure of a bidder to indicate his contractor's license number or  
25 other evidence of licensure, ~~provided that no~~ except that a contract  
26 ~~shall~~ must not be awarded to the bidder unless and until the bidder  
27 is properly licensed under the laws of South Carolina.”

28  
29 SECTION 26. Section 11-35-1525(2) and (4) of the 1976 Code,  
30 as added by Act 153 of 1997, is amended to read:

31  
32 “(2) Fixed Price Bidding. The purpose of fixed price bidding is  
33 to provide multiple sources of supply for specific ~~goods or~~  
34 services, supplies, or information technology based on a preset  
35 maximum price which the State will pay for such ~~goods or~~  
36 services, supplies, or information technology.

37 (4) Pricing. The State shall establish, ~~prior to~~ before issuance  
38 of the fixed price bid, a maximum amount the State will pay for  
39 the ~~goods or~~ services, supplies, or information technology  
40 desired.”

41  
42 SECTION 27. Section 11-35-1528(2) and (5) of the 1976 Code,  
43 as added by Act 153 of 1997, is amended to read:

1

2 “(2) Best Value Bidding. The purpose of best value bidding is  
3 to allow factors other than price to be considered in the  
4 determination of award for specific ~~goods or supplies, services, or~~  
5 information technology based on pre-determined criteria identified  
6 by the State.

7 (5) Evaluation Factors. The best value bid ~~shall~~ must state the  
8 factors to be used in determination of award and the numerical  
9 weighting for each factor. Cost must be a factor in determination  
10 of award and cannot be weighted at less than sixty percent. Best  
11 value bid evaluation factors may include, but are not limited to,  
12 any of the following as determined by the ~~purchasing agency~~  
13 procurement officer in its sole discretion and not subject to protest:

14 (a) operational costs ~~that~~ the State would incur if the bid is  
15 accepted;

16 (b) quality of the product or service, or its technical  
17 competency;

18 (c) reliability of delivery and implementation schedules;

19 (d) maximum facilitation of data exchange and systems  
20 integration;

21 (e) warranties, guarantees, and return policy;

22 (f) vendor financial stability;

23 (g) consistency of the proposed solution with the state’s  
24 planning documents and announced strategic program direction;

25 (h) quality and effectiveness of business solution and  
26 approach;

27 (i) industry and program experience;

28 (j) prior record of vendor performance;

29 (k) vendor expertise with engagement of similar scope and  
30 complexity;

31 (l) extent and quality of the proposed participation and  
32 acceptance by all user groups;

33 (m) proven development methodologies and tools; and

34 (n) innovative use of current technologies and quality  
35 results.”

36

37 SECTION 28. Section 11-35-1530 of the 1976 Code, as  
38 amended by Act 153 of 1997, is further amended to read:

39

40 “Section 11-35-1530. (1) Conditions for Use. ~~When~~ If a  
41 purchasing agency determines in writing that the use of  
42 competitive sealed bidding is either not practicable or not  
43 advantageous to the State, a contract may be entered into by

1 competitive sealed proposals subject to the provisions of Section  
2 11-35-1520 and the ensuing regulations, unless otherwise provided  
3 ~~for~~ in this section. Subject to the requirements of Section  
4 11-35-3220, the board may provide by regulation that it is either  
5 not practicable or not advantageous to the State to procure  
6 specified types of supplies, services, information technology, or  
7 construction by competitive sealed bidding.

8 (2) Public Notice. Adequate public notice of the request for  
9 proposals ~~shall~~ must be given in the same manner as provided in  
10 Section 11-35-1520(3).

11 (3) Receipt of Proposals. Proposals ~~shall~~ must be opened  
12 publicly in accordance with regulations of the board. A tabulation  
13 of proposals ~~shall~~ must be prepared in accordance with regulations  
14 promulgated by the board and ~~shall~~ must be open for public  
15 inspection after contract award.

16 (4) Request for Qualifications. ~~Prior to (a)Before~~ soliciting  
17 proposals, ~~the procuring agency, acting through the authorized~~  
18 procurement officer, may issue a request for qualifications from  
19 prospective offerors. ~~Such~~ The request shall must contain at a  
20 minimum a description of the ~~goods or services~~ scope of the work  
21 to be solicited by the request for proposals ~~and the general scope of~~  
22 ~~the work~~ and ~~shall~~ must state the deadline for submission of  
23 information and how prospective offerors may apply for  
24 consideration. The request ~~shall~~ must require information only on  
25 their qualifications, experience, and ability to perform the  
26 requirements of the contract.

27 (b) After receipt of the responses to the request for  
28 qualifications from prospective offerors, ~~the perspective offerors~~  
29 ~~shall be ranked~~ rank of the prospective offerors must be  
30 determined in writing from most qualified to least qualified on the  
31 basis of the information provided. Proposals ~~shall~~ then must be  
32 solicited from at least the top two prospective offerors by means of  
33 a request for proposals. ~~The failure of a prospective offeror to be~~  
34 ~~selected to receive the request for proposals shall not be grounds~~  
35 ~~for protest under Section 11-35-4210. The determination regarding~~  
36 how many proposals to solicit is not subject to review pursuant to  
37 Article 17.

38 (5) Evaluation Factors. The request for proposals ~~shall~~ must  
39 state the relative importance of the factors to be considered in  
40 evaluating proposals but ~~shall~~ may not require a numerical  
41 weighting for each factor. Price may, but need not, be an  
42 evaluation factor.

1 (6) Discussion with Offerors. As provided in the request for  
2 proposals, and under regulations, discussions may be conducted  
3 with ~~apparent responsive~~ offerors who submit proposals  
4 determined to be reasonably susceptible of being selected for  
5 award for the purpose of clarification to assure full understanding  
6 ~~of the requirements of, and responsiveness to, the request for~~  
7 ~~proposals solicitation requirements~~. All offerors, whose proposals,  
8 in the ~~procuring agency's~~ procurement officer's sole judgment,  
9 need clarification ~~shall~~ must be accorded ~~such an~~ that opportunity.

10 (7) Selection and Ranking. Proposals ~~shall~~ must be evaluated  
11 using only the criteria stated in the request for proposals and there  
12 must be adherence to ~~any~~ weightings that have been assigned  
13 ~~previously assigned~~. Once evaluation is complete, all responsive  
14 offerors ~~shall~~ must be ranked from most advantageous to least  
15 advantageous to the State, considering only the evaluation factors  
16 stated in the request for proposals. If price is an initial evaluation  
17 factor, award ~~shall~~ must be made in accordance with Section  
18 11-35-1530(9) below.

19 (8) Negotiations. Whether price was an evaluation factor or  
20 not, ~~the procuring agency, through the appropriate procurement~~  
21 ~~official officer, may, in its~~ his sole discretion and not subject to  
22 ~~challenge through a protest filed under Section 11-35-4210, review~~  
23 ~~under Article 17, may~~ proceed in any of the manners indicated  
24 below, except that in no case may confidential information derived  
25 from proposals and negotiations submitted by competing offerors  
26 be disclosed:

27 (a) ~~negotiate price with the highest ranked offeror. If a~~  
28 ~~satisfactory price cannot be agreed upon, price negotiations may be~~  
29 ~~conducted, in the sole discretion of the procuring agency, with the~~  
30 ~~second, and then the third, and so on, ranked offerors to such level~~  
31 ~~of ranking as determined by the procuring agency in its sole~~  
32 ~~discretion; or~~

33 (b) ~~negotiate with the highest ranking offeror on price, on~~  
34 ~~matters affecting the scope of the contract, so long as the overall~~  
35 ~~nature and intent of the contract is not changed~~ changes are within  
36 the general scope of the request for proposals, or on both. If a  
37 satisfactory contract cannot be negotiated with the highest ranking  
38 offeror, negotiations may be conducted, in the sole discretion of  
39 the ~~procuring agency~~ procurement officer, with the second, and  
40 then the third, and so on, ranked offerors to ~~such~~ the level of  
41 ranking as determined by the ~~procuring agency~~ procurement  
42 officer in ~~its~~ his sole discretion; or

1 (e)(b) during the negotiation process as outlined in  
2 ~~subsections (a) and (b) item (a) above, if an agency the~~  
3 procurement officer is unsuccessful in ~~its~~ his first round of  
4 negotiations, ~~it~~ he may reopen negotiations with any offeror with  
5 whom ~~it~~ he previously negotiated; or

6 ~~(d)(c) if, after following the procedures set forth in Section~~  
7 ~~11-35-1530(8), a contract is not able to be negotiated, the~~  
8 procurement officer may make changes within the general scope of  
9 the request for proposals may be changed in an effort to reduce the  
10 cost to a fair and reasonable amount, and may provide all  
11 responsive offerors must be allowed an opportunity to submit their  
12 best and final offers.

13 ~~In conducting negotiations, there must be no disclosure of any~~  
14 ~~confidential information derived from proposals and negotiations~~  
15 ~~submitted by competing offerors.~~

16 (9) Award. Award must be made to the responsive responsible  
17 offeror whose proposal is determined in writing to be the most  
18 advantageous to the State, taking into consideration price and the  
19 evaluation factors set forth in the request for proposals, unless the  
20 procuring agency procurement officer determines to utilize one of  
21 the options provided in Section 11-35-1530(8). The contract file  
22 shall must contain the basis on which the award is made and must  
23 be sufficient to satisfy external audit. Procedures and requirements  
24 for the notification of intent to award the contract ~~shall must~~ be the  
25 same as those ~~stated~~ provided in Section 11-35-1520(10).”

26  
27 SECTION 29. Section 11-35-1550 of the 1976 Code, as last  
28 amended by Act 153 of 1997, is further amended to read:

29  
30 “Section 11-35-1550. Authority. (1) The following small  
31 purchase procedures may be utilized only in conducting  
32 procurements for governmental bodies that are ~~less than~~  
33 twenty-five up to fifty thousand dollars in actual or potential value.  
34 ~~An agency~~ A governmental body may conduct its own  
35 procurement ~~under five up to fifty~~ thousand dollars in actual or  
36 potential value, and ~~an agency~~ a governmental body that has  
37 received procurement certification pursuant to Section 11-35-1210  
38 to handle the type and estimated value of the procurement may  
39 conduct the procurement under its own authority in accordance  
40 with ~~the procedures prescribed in this section; however,~~  
41 procurement code. Procurement requirements must not be  
42 artificially divided by governmental bodies so as to constitute a  
43 small purchase ~~under~~ pursuant to this section.



1 (2) Competition and Price Reasonableness. (a) Purchases not in  
2 excess of ~~One~~ two thousand five hundred dollars. Small purchases  
3 not exceeding ~~one~~ two thousand five hundred dollars may be  
4 accomplished without securing competitive quotations if the prices  
5 are considered ~~to be~~ reasonable. The purchasing office ~~shall~~ must  
6 annotate the purchase requisition: 'Price is fair and reasonable'  
7 and sign. The purchases must be distributed equitably among  
8 qualified suppliers. When practical, a quotation must be solicited  
9 from other than the previous supplier before placing a repeat order.  
10 The administrative cost of verifying the reasonableness of the price  
11 of purchase 'not in excess of' may more than offset potential  
12 savings in detecting instances of overpricing. Action to verify the  
13 reasonableness of the price need be taken only when the  
14 procurement officer of the governmental body suspects that the  
15 price may not be reasonable, comparison to previous price paid, or  
16 personal knowledge of the item involved.

17 (b) ~~Purchases from one thousand five hundred one dollars to~~  
18 ~~five thousand dollars. Solicitations of verbal or written quotes~~  
19 ~~from a minimum of three qualified sources of supply must be made~~  
20 ~~and documentation of the quotes attached to the purchase~~  
21 ~~requisition. The award shall be made to the lowest responsive and~~  
22 ~~responsible source.~~

23 (e) ~~Purchases from five over two thousand one five hundred~~  
24 ~~dollars to ten thousand dollars. Solicitation of written quotes from~~  
25 ~~a minimum of three qualified sources of supply must be made and~~  
26 ~~documentation of the quotes attached to the purchase requisition~~  
27 ~~for a small purchase over two thousand five hundred dollars but~~  
28 ~~not in excess of ten thousand dollars.~~ The award must be made to  
29 the lowest responsive and responsible sources.

30 (d)(c) ~~Purchases from over ten thousand one dollars up to~~  
31 ~~twenty-five fifty thousand dollars. Written solicitation of written~~  
32 ~~quotes, bids, or proposals shall must be made for a small purchase~~  
33 ~~over ten thousand dollars but not in excess of fifty thousand~~  
34 ~~dollars.~~ The procurement must be advertised at least once in the  
35 South Carolina Business Opportunities publication or through a  
36 means of central electronic advertising as approved by the ~~Office~~  
37 ~~of General Services~~ designated board office. A copy of the written  
38 solicitation and written quotes must be attached to the purchase  
39 requisition. The award ~~shall~~ must be made to the lowest  
40 responsive and responsible source or, when a request for proposal  
41 process is used, the highest ranking offeror.

1 (3) ~~Protest rights. The provisions of Section 11-35-4210 do~~  
2 ~~not apply to contracts awarded under the procedures set forth in~~  
3 ~~this section.~~

4 (4) All competitive procurements above ~~twenty five~~ ten  
5 thousand dollars must be advertised at least once in the South  
6 Carolina Business Opportunities publication or through a means of  
7 central electronic advertising as approved by the ~~Office of General~~  
8 ~~Services~~ designated board office. Governmental bodies may  
9 charge vendors the cost incurred for copying and mailing bid or  
10 proposal documents requested in response to a procurement  
11 ~~advertised in the "South Carolina Business Opportunities"~~  
12 ~~publication.~~

13 (4) The Division of Aeronautics of the Department of  
14 Commerce may act as its own purchasing agency for all  
15 procurements of maintenance services for aircraft and these  
16 procurements may be conducted pursuant to Section  
17 11-35-1550(2)(b)."

18  
19 SECTION 30. Section 11-35-1560 of the 1976 Code, as last  
20 amended by Act 153 of 1997, is further amended to read:

21  
22 "Section 11-35-1560. (A) A contract may be awarded for a  
23 supply, service, information technology, or construction item  
24 without competition ~~when~~ if, under regulations promulgated by the  
25 board, the chief procurement officer, the head of a purchasing  
26 agency, or a designee of either officer, above the level of the  
27 procurement officer, determines in writing that there is only one  
28 source for the required supply, service, information technology, or  
29 construction item.

30 (B) These regulations must include the requirements contained  
31 in this paragraph. Written documentation must include the  
32 determination and basis for the proposed sole source procurement.  
33 ~~Any~~ A delegation of authority by either the chief procurement  
34 officer or the head of a governmental body with respect to sole  
35 source determinations must be submitted in writing to the  
36 Materials Management Officer. In cases of reasonable doubt,  
37 competition must be solicited. Any decision by a governmental  
38 body that a procurement be restricted to one potential vendor must  
39 be accompanied by an explanation as to why no other will be  
40 suitable or acceptable to meet the need.

41 (C) ~~Any~~ A violation of these regulations by a purchasing  
42 agency ~~shall~~, upon recommendation of the ~~Office of General~~  
43 ~~Services~~ designated board office with approval of the majority of

1 the Budget and Control Board, must result in the temporary  
2 suspension, not to exceed one year, of the violating ~~agency's~~  
3 governmental body's ability to procure supplies, services,  
4 information technology, or construction items ~~under~~ pursuant to  
5 this section.”

6

7 SECTION 31. Section 11-35-1575 of the 1976 Code, as added  
8 by Act 153 of 1997, is amended to read:

9

10 “Section 11-35-1575. A governmental body having knowledge  
11 of either an auction or a sale of supplies from a bankruptcy may  
12 elect to participate. The governmental body shall (a) survey the  
13 needed items being offered ~~at auction~~ to ascertain their condition  
14 and usefulness, (b) determine a fair market value for new like  
15 items through informal quotes, (c) determine the fair market value  
16 from similar items considering age and useful life, and (d)  
17 estimated repair cost and delivery cost, if any, of the desired items.  
18 Using this information, the governmental body shall determine the  
19 maximum price that it can pay for each item desired. At the  
20 auction or sale, the governmental body shall not exceed the  
21 maximum price so determined.”

22

23 SECTION 32. RESERVED.

24

25 SECTION 33. Section 11-35-1825 of the 1976 Code, as last  
26 amended by Act 153 of 1997, is further amended to read:

27

28 “Section 11-35-1825. The State Engineer’s Office shall develop  
29 a procedure and a list of criteria for ~~pre-qualifying~~ prequalifying  
30 construction bidders and sub-bidders. The criteria ~~shall~~ must  
31 include, but not be limited to, prior performance, recent past  
32 references on all aspects of performance, financial stability, and  
33 experience on similar construction projects. A governmental body  
34 may use the prequalification process only for projects where the  
35 construction involved is unique in nature or over ten million  
36 dollars in value as determined by and subject to the approval of the  
37 State Engineer’s Office. All prequalification projects ~~shall~~ must be  
38 under the supervision of the State Engineer’s Office, ~~unless the~~  
39 ~~project falls within the governmental body’s procurement~~  
40 ~~certification limits~~.

41 When the prequalification process is employed, only those  
42 bidders or sub-bidders who are prequalified through this procedure  
43 ~~are entitled to~~ may submit a bid for the project. The determination

1 of which bidders and sub-bidders are prequalified, and ~~thereby~~  
2 entitled to bid, is not protestable ~~under~~ pursuant to Section  
3 11-35-4210 or ~~any~~ other provision of this code.”

4  
5 SECTION 34. Section 11-35-2010 of the 1976 Code, as last  
6 amended by Act 153 of 1997, is further amended to read:

7  
8 “Section 11-35-2010. (1) Types of Contracts. Subject to the  
9 limitations of this section, any type of contract ~~which that~~ will  
10 promote the best interests of the State may be used, except that the  
11 use of a cost-plus-a-percentage-of-cost contract ~~shall~~ must be  
12 approved by the ~~Office of General Services~~ appropriate chief  
13 procurement officer. A cost-reimbursement contract, including a  
14 cost-plus-a-percentage-of-cost contract, ~~shall~~ may be used only  
15 when a determination sufficient for external audit is prepared  
16 showing that ~~such the~~ contract is likely to be less costly to the State  
17 than any other type or that it is impracticable to obtain the supplies,  
18 services, information technology, or construction required except  
19 under ~~such a~~ that contract.

20 (2) ~~Contract Forms. The board shall promulgate by regulation~~  
21 ~~the form of the contracts to be used in connection with state~~  
22 ~~purchasing and construction. The forms as shall be developed for~~  
23 ~~Article 9 of this chapter shall be printed as a part of those~~  
24 ~~regulations. A governmental body may enter into a contract or~~  
25 ~~agreement without using the form promulgated pursuant to the~~  
26 ~~board’s regulation when the contract or agreement is for the rental~~  
27 ~~of equipment valued at ten thousand dollars or less and the~~  
28 ~~duration of the contract or agreement does not exceed ninety days.~~

29 (2)(a) As used in this section:

30 (i) ‘Contracting document’ means a standardized or  
31 model instrument, or a component part of it, for use as a contract,  
32 invitation for bids, request for proposals, request for qualifications,  
33 or instruction to bidders including, but not limited to, a contract  
34 clause or solicitation provision.

35 (ii) ‘Usage instructions’ means directions regarding (1)  
36 conditions for use of a contracting document, (2) completion of a  
37 contracting document, and (3) the process for obtaining  
38 permission, if possible, to omit or depart from the contracting  
39 document’s established content for a particular solicitation or  
40 contract.

41 (b) The chief procurement officers may develop contracting  
42 documents for their respective areas of responsibility. Contracting

1 documents may be published as internal operating procedures.  
2 Contracting documents may be accompanied by usage instructions.

3 (c) The board may adopt formally a contracting document,  
4 as developed by the appropriate chief procurement officer, for  
5 mandatory use by all governmental bodies only after notice of the  
6 proposed adoption has been published in the State Register and the  
7 board has provided the public at least sixty days to make written  
8 comments. If a contracting document is adopted by the board, the  
9 contracting document must be published in the State Register,  
10 accompanied by usage instructions, and used by all governmental  
11 bodies in accordance with its usage instructions. The chief  
12 procurement officers are not required to submit for board approval  
13 contracting documents used in connection with either solicitations  
14 issued or contracts awarded by the board or its offices.

15 (d) Notwithstanding item (c) above, the board may  
16 promulgate contracting documents as regulations.”

17  
18 SECTION 35. Section 11-35-2030 of the 1976 Code, as last  
19 amended by Act 153 of 1997, is further amended to read:

20  
21 “Section 11-35-2030. (1) Specified Period. Unless otherwise  
22 provided by law, a contract for supplies, ~~or services, or information~~  
23 ~~technology shall must~~ not be entered into for any a period of more  
24 than one year unless approved in a manner prescribed by  
25 regulation of the board; ~~provided, that~~ The term of the contract  
26 and conditions of renewal or extension, ~~if any, are must be~~  
27 included in the solicitation and funds ~~are must be~~ available for the  
28 first fiscal period at the time of contracting. Payment and  
29 performance obligations for succeeding fiscal periods ~~shall must~~  
30 be subject to the availability and appropriation of funds ~~therefore~~  
31 ~~for them.~~

32 (2) Determination Prior to Use. ~~Prior to~~ Before the utilization  
33 of a multi-term contract, it ~~shall must~~ be determined in writing by  
34 the appropriate governmental body ~~that~~:

35 (a) ~~that~~ estimated requirements cover the period of the  
36 contract and are reasonably firm and continuing; and

37 (b) ~~that~~ such a contract ~~will serve~~ serves the best interests of  
38 the State by encouraging effective competition or otherwise  
39 promoting economies in state procurement.

40 (3) Cancellation Due to Unavailability of Funds in Succeeding  
41 Fiscal Periods. When funds are not appropriated or otherwise  
42 made available to support continuation of performance in a  
43 subsequent fiscal period, the contract ~~shall must~~ be canceled.

1 (4) The maximum time for ~~any~~ a multi-term contract is five  
2 years. Contract terms of up to seven years may be approved by the  
3 ~~Director of the Office of General Services~~ designated board  
4 officer. Contracts exceeding seven years must be approved by the  
5 ~~Budget and Control~~ board.”

6  
7 SECTION 36. Section 11-35-2210 of the 1976 Code, as last  
8 amended by Act 153 of 1997, is further amended to read:

9  
10 “Section 11-35-2210. ~~The Office of General Services shall be~~  
11 appropriate chief procurement officer or his designee is  
12 authorized, at reasonable times, to inspect the part of the plant or  
13 place of business of a contractor or ~~any~~ subcontractor which is  
14 related to the performance of ~~any~~ a contract awarded or to be  
15 awarded by the State.”

16  
17 SECTION 37. Section 11-35-2410 of the 1976 Code, as last  
18 amended by Act 153 of 1997, is further amended to read:

19  
20 “Section 11-35-2410. (A) The determinations required by the  
21 following sections and related regulations are final and conclusive,  
22 unless clearly erroneous, arbitrary, capricious, or contrary to law:  
23 Section 11-35-1520(7) (Competitive Sealed Bidding: Correction  
24 or Withdrawal of Bids; Cancellation of Awards), Section  
25 11-35-1520(11) (Competitive Sealed Bidding: Request for  
26 Qualifications), Section 11-35-1525(1) (Competitive Fixed Price  
27 Bidding: Conditions for Use), Section 11-35-1528(1)  
28 (Competitive Best Value Bidding: Conditions for Use), Section  
29 11-35-1528(8) (Competitive Best Value Bidding: Award), Section  
30 11-35-1529(1) (Competitive On-line Bidding: Conditions for Use),  
31 Section 11-35-1530(1) (Competitive Sealed Proposals, Conditions  
32 for Use), Section 11-35-1530(4) (Competitive Sealed Proposals:  
33 Request for Qualifications), ~~Section 11-35-1530(8) (Competitive~~  
34 ~~Sealed Proposals: Negotiations),~~ Section 11-35-1530(9)(7)  
35 (Competitive Sealed Proposals, Selection and Ranking of  
36 Prospective Offerors), Section 11-35-1530(10)(9) (Competitive  
37 Sealed Proposals Award), Section 11-35-1540 (Negotiations After  
38 Unsuccessful Competitive Sealed Bidding), Section 11-35-1560  
39 (Sole Source Procurement), Section 11-35-1570 (Emergency  
40 Procurement), Section 11-35-1710 (Cancellation of Invitation for  
41 Bids or Requests for Proposals), Section 11-35-1810(2)  
42 (Responsibility of Bidders and Offerors, Determination of  
43 Nonresponsibility), Section 11-35-1825 (Prequalification of

1 Construction Bidders), Section 11-35-1830(3) (Cost or Pricing  
2 Data, Cost or Pricing Data Not Required), Section 11-35-2010  
3 (Types and Forms of Contracts), Section 11-35-2020 (Approval of  
4 Accounting System), Section 11-35-2030(2) (Multi-Term  
5 Contracts, Determination Prior to Use), Section 11-35-3020(2)(d)  
6 (Construction Procurement Procedures: Negotiations after  
7 Unsuccessful Competitive Sealed Bidding), Section 11-35-3220(5)  
8 (Procurement Procedure, Selection and Ranking of the Five Most  
9 Qualified), ~~and~~ Section 11-35-4210(7) (Stay of Procurement  
10 During Protests, Decision to Proceed), and Section 11-35-4810  
11 (Cooperative Use of Supplies, Services, or Information  
12 Technology) ~~shall be final and conclusive unless they are clearly~~  
13 ~~erroneous, arbitrary, capricious, or contrary to law.~~

14 (B) The chief procurement officers or their designees shall  
15 review samples of ~~such~~ the determinations periodically, and issue  
16 reports and recommendations on the appropriateness of the  
17 determinations made.”

18

19 SECTION 38. Section 11-35-2440 of the 1976 Code, as last  
20 amended by Act 153 of 1997, is further amended to read:

21

22 “Section 11-35-2440. (1)(a) Contents of Records. ~~Any~~ A  
23 governmental body as defined in Section 11-35-310(18) shall  
24 submit quarterly a record listing all contracts made ~~under~~ pursuant  
25 to Section 11-35-1560 (Sole Source Procurement) or Section  
26 11-35-1570 (Emergency Procurements) to the chief procurement  
27 officers. The record ~~shall~~ must contain:

28

(~~a~~)(i) each contractor’s name;

29

(~~b~~)(ii) the amount and type of each contract;

30

(~~e~~)(iii) a listing of supplies, services, information  
31 technology, or construction procured under each contract.

32

(b) The chief procurement officers shall maintain these  
33 records for five years.

34

(2) Publication of Records. A copy of the record ~~shall~~ must be  
35 submitted to the board on an annual basis and ~~shall~~ must be  
36 available for public inspection.”

37

38 SECTION 39. Section 11-35-2710 of the 1976 Code, as last  
39 amended by Act 153 of 1997, is further amended to read:

40

41 “Section 11-35-2710. The board shall promulgate regulations  
42 governing the preparation, maintenance, and content of

1 specifications for supplies, services, information technology, and  
2 construction required by the State.”

3  
4 SECTION 40. Section 11-35-2720 of the 1976 Code, as last  
5 amended by Act 153 of 1997, is further amended to read:

6  
7 “Section 11-35-2720. The chief procurement officers ~~shall~~ may  
8 prepare or review, issue, revise, and maintain the specifications for  
9 supplies, services, information technology, and construction  
10 required by the State, except for supplies, services, information  
11 technology, and construction items procured by the governmental  
12 bodies pursuant to Sections 11-35-1550, 11-35-1570, and  
13 11-35-3230, the specification for which ~~shall~~ must be prepared and  
14 maintained by the using agencies in accordance with the provisions  
15 of this article and regulations promulgated ~~hereunder~~ under it and  
16 monitored periodically by the chief procurement officers.”

17  
18 SECTION 41. Section 11-35-3020 of the 1976 Code, as last  
19 amended by Act 153 of 1997, is further amended to read:

20  
21 “Section 11-35-3020. (1) Source Selection. All state  
22 construction contracts ~~shall~~ must be awarded by competitive sealed  
23 bidding pursuant to the procedures set forth in Section 11-35-1520,  
24 subject to the exceptions enumerated in subsection (2) of this  
25 section and except as provided in Sections 11-35-1550,  
26 11-35-1560, and 11-35-1570. Competitive sealed proposals as  
27 provided in Section 11-35-1530 ~~and multi-step sealed bidding as~~  
28 ~~provided in Section 11-35-1520(11)~~ shall must not be used, except  
29 in ~~such~~ cases and in accordance with criteria as may be authorized  
30 and prescribed by regulation of the board.

31 (2) Exceptions in Competitive Sealed Bidding Procedures.  
32 The process of competitive sealed bidding as required by  
33 subsection (1) ~~of this section~~ shall must be performed in  
34 accordance with the procedures outlined in Article 5 of this code  
35 subject to the following exceptions:

36 (a) Invitation for Bids. ~~In lieu~~ Instead of Section  
37 11-35-1520(2), Section 11-35-1520(3), and Section 11-35-1520(4),  
38 invitations for bids for each state construction project subject to  
39 subsection (1) ~~of this section~~ shall must be made in the following  
40 manner. Each using agency ~~shall~~ must be responsible for  
41 developing a formal invitation for bids for each state construction  
42 project subject to subsection (1) ~~of this section~~. The invitation  
43 ~~shall~~ must include, but not be limited to, all contractual terms and



1 conditions applicable to the procurement. A copy of each  
2 invitation for bids ~~shall~~ must be filed with the State Engineer's  
3 Office and ~~shall~~ must be advertised formally ~~advertised~~ in an  
4 official state government publication. The manner in which this  
5 official state government publication ~~shall~~ must be published, the  
6 content of the publication itself, the frequency of the publication,  
7 the method of subscription to the publication, and the manner by  
8 which the publication ~~will be~~ is distributed ~~shall~~ must be  
9 established by regulation of the board.

10 (b) Bid Acceptance. ~~In lieu~~ Instead of Section  
11 11-35-1520~~(7)~~(6), the following provision applies. Bids must be  
12 accepted unconditionally without alteration or correction, except as  
13 otherwise authorized in this code. The using agency's invitation  
14 for bids ~~shall~~ must set forth all requirements of the bid including,  
15 but not limited to:

16 (i) The using agency, in consultation with the  
17 architect-engineer assigned to the project, shall identify by  
18 specialty in the invitation for bids all subcontractors, ~~as defined by~~  
19 ~~applicable documents of the American Institute of Architects~~, who  
20 are expected to perform work for the prime contractor to or about  
21 the construction when those subcontractors' contracts are each  
22 expected to exceed three percent of the prime contractor's total  
23 base bid. In addition, the using agency, in consultation with the  
24 architect-engineer assigned to the project, may identify by  
25 specialty in the invitation for bids any subcontractors who are  
26 expected to perform work which is vital to the project. The  
27 determination of which subcontractors are included in the list  
28 provided in the invitation for bids is not protestable ~~under~~ pursuant  
29 to Section 11-35-4210 or ~~any other~~ another provision of this code.  
30 ~~Any~~ A bidder in response to an invitation for bids shall set forth in  
31 his bid the name of only those subcontractors ~~that will~~ to perform  
32 the work as identified in the invitation for bids. If the bidder  
33 determines to use his own employees to perform ~~any~~ a portion of  
34 the work for which he would otherwise be required to list a  
35 subcontractor and if the bidder is qualified to perform ~~such~~ that  
36 work under the terms of the invitation for bids, the bidder shall list  
37 himself in the appropriate place in his bid and not subcontract ~~any~~  
38 ~~of~~ that work except with the approval of the using agency for good  
39 cause shown.

40 (ii) Failure to complete the list provided in the invitation  
41 for bids renders the bidder's bid unresponsive.

42 (iii) ~~No~~ A prime contractor whose bid is accepted ~~shall~~  
43 may not substitute ~~any~~ a person as subcontractor in place of the

1 subcontractor listed in the original bid, except for one or more of  
2 the following reasons:

3 (a) upon a showing satisfactory to the using agency by  
4 the contractor that a subcontractor who was listed is not financially  
5 responsible;

6 (b) upon a showing satisfactory to the using agency by  
7 the contractor that the scope of work bid by a listed subcontractor  
8 did not include a portion of the work required in the plans and  
9 specifications, and the exclusion is not clearly set forth in the listed  
10 subcontractor's original bid;

11 (c) upon a showing satisfactory to the using agency  
12 made by the contractor within four working days of the bid  
13 opening that the subcontractor was listed as a result of an  
14 inadvertent clerical error;

15 (d) upon a showing satisfactory to the using agency by  
16 the contractor that the listed subcontractor failed or refused to  
17 submit a performance and payment bond when requested by the  
18 prime contractor after the subcontractor had represented to the  
19 prime contractor that he could obtain a performance and payment  
20 bond;

21 (e) upon a showing satisfactory to the using agency by  
22 the contractor that the listed subcontractor is required to be  
23 licensed and does not have the license by the time it is required by  
24 law;

25 (f) when the listed subcontractor fails or refuses to  
26 perform his subcontract;

27 (g) when the work of the listed subcontractor is found  
28 by the using agency to be substantially unsatisfactory;

29 (h) upon mutual agreement of the contractor and  
30 subcontractor;

31 (i) with the consent of the using agency for good cause  
32 shown.

33 (iv) The request for substitution must be made to the using  
34 agency in writing. This written request does not give rise to ~~any a~~  
35 private right of action against the prime contractor in the absence  
36 of actual malice.

37 ~~(iv)~~(v) Where substitution is allowed, the prime contractor,  
38 before obtaining prices from ~~any other~~ another subcontractor, ~~must~~  
39 shall attempt in good faith to negotiate a subcontract with at least  
40 one subcontractor whose bid was received ~~prior to~~ before the  
41 submission of the prime contractor's bid. ~~Nothing in this~~ This  
42 section ~~affects~~ does not affect a contractor's ability to request

1 withdrawal of a bid in accordance with the provisions of this code  
2 and the regulations promulgated ~~under~~ pursuant to it.

3 ~~(v)~~(vi) The using agency shall send all responsive bidders a  
4 copy of the bid tabulation within ten working days following the  
5 bid opening.

6 (c) ~~In lieu~~ Instead of Section 11-35-1520(10) the following  
7 provisions apply. Unless there is a compelling reason to reject  
8 bids as prescribed by regulation of the board, notice of an intended  
9 award of a contract to the lowest responsive and responsible bidder  
10 whose bid meets the requirements set forth in the invitation for  
11 bids ~~shall~~ must be given by posting ~~such~~ the notice at a location  
12 ~~which has been~~ that is specified in the invitation for bids. The  
13 invitation for bids and the posted notice must contain a statement  
14 of the bidder's right to protest ~~under~~ pursuant to Section  
15 11-35-4210(1) and the date and location of posting must be  
16 announced at bid opening. In addition to posting notice as  
17 ~~provided above~~, the using agency ~~shall~~ shall send all  
18 responsive bidders a copy of the notice of intended award and of  
19 the bid tabulation. ~~Such~~ The mailed notice must indicate the  
20 posting date and must contain a statement of the bidder's right to  
21 protest ~~under~~ pursuant to Section 11-35-4210(1).

22 ~~Sixteen days~~ After ten days' notice is given, the using agency  
23 may enter into a contract with the bidder named in the notice in  
24 accordance with the provisions of this code and of the bid  
25 solicited. ~~A determination of responsibility must be made before~~  
26 ~~award in accordance with Section 11-35-1810.~~ The procurement  
27 officer must comply with Section 11-35-1810.

28 If, at bid opening, only one bid is received and determined to be  
29 responsive and responsible and within the agency's construction  
30 budget, award may be made without the ~~sixteen-day~~ ten-day  
31 waiting period.

32 (d) Negotiations after Unsuccessful Competitive Sealed  
33 Bidding. ~~In lieu~~ Instead of Section 11-35-1540, the following  
34 provisions apply:

35 (1) When bids received pursuant to an invitation for bids  
36 exceed available funds, and it is determined in writing by the  
37 agency that circumstances will do not permit the delay required to  
38 resolicit competitive sealed bids, and the base bid, less any  
39 deductive alternates, does not exceed available funds by an amount  
40 greater than ten percent of the construction budget established for  
41 that portion of the work, a contract may be negotiated pursuant to  
42 this section with the lowest responsible and responsive bidder,  
43 ~~provided that this base bid, less any deductive alternates, does not~~

1 ~~exceed available funds by an amount greater than five percent of~~  
2 ~~the construction budget established for that portion of the work.~~  
3 The using agency may change the scope of the work to reduce the  
4 cost to be within the established construction budget but ~~shall~~ may  
5 not reduce the cost below the established construction budget more  
6 than ten percent without a written request by the agency and the  
7 written approval of the chief procurement officer based on the best  
8 interest of the State.

9 (2) When the lowest base bid received pursuant to an  
10 invitation for bids exceeds approved available funds and the using  
11 agency is able to identify additional funds for the project, as  
12 certified by the appropriate fiscal officers, in the amount of the  
13 difference between the lowest base bid and the approved available  
14 funds for the project, the using agency shall submit its request to  
15 use such additional funds to the board and the Joint Bond Review  
16 Committee in accordance with Sections 2-47-40 and 2-47-50.  
17 ~~Sections 3A and 3B of Act 761 of 1976 which were added~~  
18 ~~pursuant to Sections 2-47-40 and 2-47-50.”~~

19  
20 SECTION 42. Section 11-35-3030 of the 1976 Code, as last  
21 amended by Act 97 of 2005, is further amended to read:

22  
23 “Section 11-35-3030. (1) Bid Security. (a) Requirement for Bid  
24 Security. Bid security is required for all competitive sealed  
25 bidding for construction contracts in excess of ~~one hundred~~ fifty  
26 thousand dollars and ~~such~~ other contracts as may be prescribed by  
27 the State Engineer’s Office. Bid security is a bond provided by a  
28 surety company meeting the criteria established by the regulations  
29 of the board or otherwise supplied in a form ~~which~~ that may be  
30 established by regulation of the board.

31 (b) Amount of Bid Security. Bid security ~~shall~~ must be in an  
32 amount equal to at least five percent of the amount of the bid at a  
33 minimum.

34 (c) Rejection of Bids for Noncompliance with Bid Security  
35 Requirements. When the invitation for bids requires security,  
36 noncompliance requires that the bid be rejected except that a  
37 bidder who fails to provide bid security in the proper amount or a  
38 bid bond with the proper rating ~~shall~~ must be given one working  
39 day from bid opening to cure ~~such~~ the deficiencies. If the bidder  
40 ~~cannot~~ is unable to cure these deficiencies within one working day  
41 of bid opening, his bid ~~shall~~ must be rejected.

42 (d) Withdrawal of Bids. After the bids are opened, they  
43 ~~shall~~ must be irrevocable for the period specified in the invitation

1 for bids. If a bidder is permitted to withdraw its bid before bid  
2 opening pursuant to Section 11-35-1520(8) ~~no~~ action ~~shall~~ must  
3 not be had against the bidder or the bid security.

4 (2) Contract Performance Payment Bonds. (a) When  
5 Required-Amounts. When a construction contract is awarded  
6 pursuant to Section 11-35-3020, the following bonds or security  
7 ~~shall~~ must be delivered to the using agency and ~~shall~~ become  
8 binding on the parties upon the execution of the contract:

9 (i) a performance bond satisfactory to the State, executed  
10 by a surety company meeting the criteria established by the board  
11 in regulations, or otherwise secured in a manner satisfactory to the  
12 State, in an amount equal to one hundred percent of the price  
13 specified in the contract;

14 (ii) a payment bond satisfactory to the State, executed by a  
15 surety company meeting the criteria established by the board in  
16 regulations, or otherwise secured in a manner satisfactory to the  
17 State, for the protection of all persons supplying labor and material  
18 to the contractor or its subcontractors for the performance of the  
19 work provided for in the contract. The bond ~~shall~~ must be in an  
20 amount equal to one hundred percent of the contract price.

21 (iii) in the case of a construction contract valued at ~~one~~  
22 ~~hundred~~ fifty thousand dollars or less, the using agency may waive  
23 the requirements of (i) and (ii) above, provided that the using  
24 agency has protected the State.

25 (b) Authority to Require Additional Bonds. ~~Nothing in~~  
26 ~~subsection~~ Subsection (2) ~~of this section shall be construed to~~ does  
27 not limit the authority of the board to require a performance bond  
28 or other security in addition to these bonds, or in circumstances  
29 other than specified in item (a) of ~~such~~ that subsection in  
30 accordance with regulations promulgated by the board.

31 (c) Suits on Payment Bonds--Right to Institute. Every  
32 person who has furnished labor, material, or rental equipment to a  
33 bonded contractor or his subcontractors for the work specified in  
34 the contract, and who has not been paid in full ~~therefor~~ for it before  
35 the expiration of a period of ninety days after the day on which the  
36 last of the labor was done or performed by ~~such~~ the person or  
37 material or rental equipment was furnished or supplied by ~~such~~ the  
38 person for which ~~such~~ the claim is made, ~~shall have~~ has the right to  
39 sue on the payment bond for the amount, or the balance ~~thereof~~ of  
40 it, unpaid at the time of institution of ~~such~~ the suit and to prosecute  
41 ~~such~~ the action for the sum or sums justly due ~~such~~ the person. A  
42 remote claimant ~~shall have~~ has a right of action on the payment  
43 bond only upon giving written notice to the contractor within

1 ninety days from the date on which ~~such~~ the person did or  
2 performed the last of the labor or furnished or supplied the last of  
3 the material or rental equipment upon which ~~such~~ the claim is  
4 made, stating with substantial accuracy the amount claimed as  
5 unpaid and the name of the party to whom the material or rental  
6 equipment was furnished or supplied or for whom the labor was  
7 done or performed. ~~Such~~ The written notice to the bonded  
8 contractor ~~shall~~ must be ~~served~~ personally served or served by  
9 mailing the ~~same~~ notice by registered or certified mail, postage  
10 prepaid, in an envelope addressed to the bonded contractor at any  
11 place the bonded contractor maintains a permanent office for the  
12 conduct of its business, or at the current address as shown on the  
13 records of the Department of Labor, Licensing and Regulation.  
14 ~~However, in no event shall the~~ The aggregate amount of ~~any a~~  
15 claim against ~~such~~ the payment bond by a remote claimant may not  
16 exceed the amount due by the bonded contractor to the person to  
17 whom the remote claimant has supplied labor, materials, rental  
18 equipment, or services, unless the remote claimant has provided  
19 notice of furnishing labor, materials, or rental equipment to the  
20 bonded contractor. ~~Such~~ The written notice to the bonded  
21 contractor ~~shall~~ must be ~~served~~ personally served or sent by fax or  
22 ~~sent~~ by electronic mail or ~~sent~~ by registered or certified mail,  
23 postage prepaid, to the bonded contractor at any place the bonded  
24 contractor maintains a permanent office for the conduct of its  
25 business, or at the current address as shown on the records of the  
26 Department of Labor, Licensing and Regulation. After receiving  
27 the notice of furnishing labor, materials, or rental equipment, ~~no~~  
28 payment by the bonded contractor ~~shall~~ may not lessen the amount  
29 recoverable by the remote claimant. ~~However, in no event shall the~~  
30 The aggregate amount of claims on the payment bond may not  
31 exceed the penal sum of the bond.

32 ~~No~~ A suit under this section ~~shall~~ must not be commenced after  
33 the expiration of one year after the last date of furnishing or  
34 providing labor, services, materials, or rental equipment.

35 For purposes of this section, 'bonded contractor' means the  
36 contractor or subcontractor furnishing the payment bond, and  
37 'remote claimant' means a person having a direct contractual  
38 relationship with a subcontractor of a bonded contractor, but no  
39 ~~contractual—relationship~~ expressed or implied contractual  
40 relationship with the bonded contractor.

41 (d) Suits on Payment Bonds--Where and When Brought.  
42 Every suit instituted upon a payment bond ~~shall~~ must be brought in  
43 a court of competent jurisdiction for the county or circuit in which

1 the construction contract was to be performed, ~~but no such~~; except  
2 that a suit shall must not be commenced after the expiration of one  
3 year after the day on which the last of the labor was performed or  
4 material was supplied by the person bringing suit. The obligee  
5 named in the bond need not be joined as a party in ~~any such~~ the  
6 suit.

7 (3) Bonds Forms and Copies. (a) Bond Forms. The board  
8 shall promulgate by regulation the form of the bonds required by  
9 this section.

10 (b) Certified Copies of Bonds. ~~Any~~ A person may request  
11 and obtain from the using agency a certified copy of a bond upon  
12 payment of the cost of reproduction of the bond and postage, if  
13 any. A certified copy of a bond ~~shall be~~ is prima facie evidence of  
14 the contents, execution, and delivery of the original.

15 (4) (4) Retention. (a) Maximum amount to be withheld. In  
16 ~~any a~~ contract or subcontract for construction which ~~contract or~~  
17 ~~subcontract~~ provides for progress payments in installments based  
18 upon an estimated percentage of completion, with a percentage of  
19 the contract's proceeds to be retained by the State or general  
20 contractor pending completion of the contract or subcontract, the  
21 retained amount of each progress payment or installment must be  
22 no more than three and one-half percent.

23 (b) Release of Retained Funds. When the work to be  
24 performed on a state construction project or pursuant to a state  
25 construction contract is to be performed by multiple prime  
26 contractors or by a prime contractor and multiple subcontractors,  
27 the work contracted to be done by each individual contractor or  
28 subcontractor ~~will be~~ is considered a separate division of the  
29 contract for the purpose of retention. As each ~~such~~ division of the  
30 contract is certified as having been completed, that portion of the  
31 retained funds which is allocable to the completed division of the  
32 contract ~~shall must~~ be released forthwith to the prime contractor,  
33 who ~~shall~~, within ten days of its receipt, shall release to the  
34 subcontractor responsible for the completed work the full amount  
35 of ~~any~~ retention previously withheld from him by the prime  
36 contractor.

37 (5) Bonds for Bid Security and Contract Performance. The  
38 requirement of a bond for bid security on a construction contract,  
39 pursuant to subsection (1), and a construction contract performance  
40 bond, pursuant to subsection (2), may not include a requirement  
41 that the surety bond be furnished by a particular surety company or  
42 through a particular agent or broker.”

43

1 SECTION 43. Section 11-35-3040 of the 1976 Code, as last  
2 amended by Act 153 of 1997, is further amended to read:

3

4 “Section 11-35-3040. (1) Contract Clauses. State construction  
5 contracts and subcontracts ~~promulgated by regulation pursuant to~~  
6 ~~Section 11-35-2010(2)~~ may include clauses providing for  
7 adjustments in prices, time of performance, and other appropriate  
8 contract provisions including, but not limited to:

9 (a) the unilateral right of a governmental body to order in  
10 writing:

11 (i) all changes in the work within the scope of the  
12 contract, and

13 (ii) all changes in the time of performance of the contract  
14 ~~that~~ which do not alter the scope of the contract work;

15 (b) variations occurring between estimated quantities of  
16 work in the contract and actual quantities;

17 (c) suspension of work ordered by the governmental body;

18 (d) site conditions differing from those indicated in the  
19 contract or ordinarily encountered, ~~except that differing site~~  
20 ~~condition clauses promulgated by the board need not be included~~  
21 ~~in a contract:~~

22 (i) ~~when the contract is negotiated; or~~

23 (ii) ~~when the parties have otherwise agreed with respect to~~  
24 ~~the risk of differing site conditions.~~

25 (2) Price Adjustments. (a) Adjustments in price pursuant to  
26 clauses adopted or promulgated under subsection (1) of this section  
27 ~~shall pursuant to Section 11-35-2010~~ must be computed and  
28 documented with a written determination. The price adjustment  
29 agreed upon ~~shall~~ must approximate the actual cost to the  
30 contractor and all costs incurred by the contractor ~~shall~~ must be  
31 justifiably compared with prevailing industry standards, including  
32 reasonable profit. Costs ~~shall~~ must be properly itemized and  
33 supported by substantiating data sufficient to permit evaluation  
34 before commencement of the pertinent performance or as soon  
35 ~~thereafter~~ after that as practicable, and ~~shall~~ must be arrived at  
36 through whichever one of the following ways is the most valid  
37 approximation of the actual cost to the contractor:

38 (i) by unit prices specified in the contract or subsequently  
39 agreed upon;

40 (ii) by the costs attributable to the events or situations  
41 under ~~such~~ those clauses with adjustment of profits or fee, all as  
42 specified in the contract or subsequently agreed upon;

43 (iii) by agreement on a fixed price adjustment;



1 (iv) in ~~such other~~ another manner as the contracting parties  
2 may mutually agree; or

3 (v) in the absence of agreement by the parties, through  
4 unilateral determination by the governmental body of the costs  
5 attributable to the events or situations under ~~such~~ those clauses,  
6 with adjustment of profit or fee, all as computed by the  
7 governmental body in accordance with applicable sections of the  
8 regulations issued ~~under~~ pursuant to this chapter and subject to the  
9 provisions of Article 17 of this chapter.

10 (b) A contractor ~~shall be~~ is required to submit cost or pricing  
11 data if ~~any~~ an adjustment in contract price is subject to the  
12 provisions of Section 11-35-1830.

13 (3) Additional Contract Clauses. The construction contracts  
14 and subcontracts ~~promulgated pursuant to Section 11-35-2010(2)~~  
15 may include clauses providing for appropriate remedies ~~which~~ that  
16 cover as a minimum:

17 (a) specified excuses for delay or nonperformance;

18 (b) termination of the contract for default;

19 (c) termination of the contract in whole or in part for the  
20 convenience of the governmental body.

21 (4) Modification of Required Clauses. The chief procurement  
22 officer may vary the clauses promulgated by the board ~~under~~  
23 pursuant to subsection (1) and subsection (3) of this section for  
24 inclusion in ~~any~~ a particular construction contract; ~~provided, that~~  
25 ~~any~~ if the variations are supported by a written determination that  
26 states the circumstances justifying ~~such~~ the variations; ~~and~~  
27 ~~provided, further, that, if~~ notice of any such a material variation ~~be~~  
28 is stated in the invitation for bids.”

29

30 SECTION 44. Section 11-35-3060 of the 1976 Code, as last  
31 amended by Act 153 of 1997, is further amended to read:

32

33 “Section 11-35-3060. Every contract modification, change  
34 order, or contract price adjustment under a construction contract  
35 with the State ~~shall be~~ is subject to ~~the procedures outlined in~~  
36 ~~Sections 3A and 3B of Act 761 of 1976 which were added~~  
37 ~~pursuant to~~ Sections 2-47-40 and 2-47-50.”

38

39 SECTION 45. Section 11-35-3220 of the 1976 Code, as last  
40 amended by Act 153 of 1997, is further amended to read:

41

42 “Section 11-35-3220. (1) Agency Selection Committee. Each  
43 using agency shall establish its own architect-engineer,

1 construction management, and land surveying services selection  
2 committee, ~~hereinafter~~ referred to as the agency selection  
3 committee, ~~which shall~~ that must be composed of those individuals  
4 whom the agency head determines to be qualified to make an  
5 informed decision as to the most competent and qualified firm for  
6 the proposed project. The head of the using agency or his qualified  
7 responsible designee shall sit as a permanent member of the  
8 agency selection committee for the purpose of coordinating and  
9 accounting for the committee's work. To assist an agency  
10 selection committee in the selection of firms to be employed for  
11 significant or highly technical projects and to facilitate prompt  
12 selections, the agency selection committee may invite the State  
13 Engineer or his designee to sit as a nonvoting member of the  
14 committee.

15 (2)(a) Advertisement of Project Description. The agency  
16 selection committee ~~shall be~~ is responsible for:

- 17 ~~(a)~~(i) developing a description of the proposed project; ;  
18 ~~(b)~~(ii) enumerating all required professional services for  
19 that project; ; and  
20 ~~(c)~~(iii) preparing a formal invitation to firms for  
21 submission of information.

22 (b) The invitation ~~shall~~ must include, but not be limited to,  
23 the project title, the general scope of work, a description of all  
24 professional services required for that project, the submission  
25 deadline, and how interested firms may apply for consideration.  
26 The agency selection committee shall file a copy of the project  
27 description and the invitation with the State Engineer's Office.  
28 The invitation ~~shall~~ must be advertised formally ~~advertised~~ in an  
29 official state government publication. The manner in which this  
30 official state government publication ~~shall~~ must be published, the  
31 content of the publication itself, the frequency of the publication,  
32 the method for subscription to the publication, and the manner by  
33 which the publication ~~will be~~ is distributed ~~shall~~ must be  
34 established by regulation of the board.

35 (3) Response to Invitation. The date for submission of  
36 information from interested persons or firms in response to an  
37 invitation ~~shall~~ must not be ~~not~~ less than fifteen days after  
38 publication of the invitation. Interested architect-engineer,  
39 construction management, and land surveying persons or firms  
40 shall ~~be required to~~ respond to the invitation with the submission  
41 of a current and accurate Federal Standard Form 254,  
42 Architect-Engineer and Related Services Questionnaire, and  
43 Federal Standard Form 255, Architect-Engineer and Related

1 Services Questionnaire for Specific Project, or their successor  
2 forms or ~~such~~ similar information as the board may prescribe by  
3 regulation, and ~~any~~ other information ~~which~~ that the particular  
4 invitation may require.

5 (4) Interviews with Interested Firms. Following receipt of  
6 information from all interested persons and firms, the agency  
7 selection committee shall hold interviews with at least ~~five~~ three  
8 persons or firms who ~~have responded~~ respond to the committee's  
9 advertisement and who are ~~deemed~~ considered most qualified on  
10 the basis of information available ~~prior to~~ before the interviews. A  
11 list of firms selected for interview ~~shall~~ must be sent to all firms  
12 that submitted information in response to the advertisement, ~~prior~~  
13 ~~to~~ before the date selected for the interviews. If less than ~~five~~ three  
14 persons or firms ~~have responded~~ respond to the advertisement, the  
15 committee shall hold interviews with those that did respond. The  
16 agency selection committee's determination as to which ~~will~~ are to  
17 be interviewed ~~shall~~ must be in writing and ~~shall be~~ based upon its  
18 review and evaluation of all submitted materials. The written  
19 report of the committee ~~shall~~ must ~~specifically~~ list specifically the  
20 names of all persons and firms that responded to the advertisement  
21 and enumerate the reasons of the committee for selecting those to  
22 be interviewed. The purpose of the interviews ~~shall be~~ is to  
23 provide ~~such~~ the further information as ~~that~~ may be required by the  
24 agency selection committee to fully acquaint itself with the relative  
25 qualifications of the several interested firms.

26 (5) Selection and Ranking of the ~~Five~~ Three Most Qualified.

27 (a) The agency selection committee shall evaluate each of  
28 the persons or firms interviewed in view of their:

29 ~~(a)~~(i) past performance;

30 ~~(b)~~(ii) the ability of professional personnel;

31 ~~(c)~~(iii) demonstrated ability to meet time and budget  
32 requirements;

33 ~~(d)~~(iv) location and knowledge of the locality of the project  
34 if the application of this criterion leaves an appropriate number of  
35 qualified firms, given the nature and size of the project;

36 ~~(e)~~(v) recent, current, and projected workloads of the  
37 firms;

38 ~~(f)~~(vi) creativity and insight related to the project; ~~and~~

39 ~~(g)~~(vii) related experience on similar projects;

40 ~~(h)~~(viii) volume of work awarded by the using agency to the  
41 person or firm during the previous five years, with the objective of  
42 effectuating an equitable distribution of contracts by the State  
43 among qualified firms including Minority Business Enterprises

1 certified by the South Carolina Office of Small and Minority  
2 Business Assistance and firms that have not had previous state  
3 work; and

4 (ix) any other special qualification required pursuant to the  
5 solicitation of the using agency.

6 (b) Based upon these evaluations, the agency selection  
7 committee shall select the ~~five~~ three persons or firms ~~which that~~, in  
8 its judgment, are the best qualified, ranking the ~~five~~ three in  
9 priority order. The agency selection committee's report ranking  
10 the ~~five~~ three chosen persons or firms ~~shall~~ must be in writing and  
11 ~~shall~~ include data substantiating its determinations.

12 (6) Notice of Selection and Ranking. When it is determined by  
13 the agency that the ranking report is final, written notification of  
14 the ~~election immediately shall~~ highest ranked person or firm must  
15 be sent immediately to all firms interviewed.

16 (7) Negotiation of Contract. The governing body of the using  
17 agency or its designee shall negotiate a contract for services with  
18 the most qualified person or firm at a compensation ~~which that~~ is  
19 fair and reasonable to the State. ~~Should~~ If the governing body of  
20 the using agency or its designee ~~be is~~ unable to negotiate a  
21 satisfactory contract with this person or firm, negotiations ~~shall~~  
22 must be terminated formally ~~terminated~~. Negotiations ~~shall~~ must  
23 commence in the same manner with the second and then the third,  
24 ~~fourth and fifth~~ most qualified until a satisfactory contract ~~has been~~  
25 is negotiated. If ~~no~~ an agreement is not reached with one of the  
26 ~~five~~ three, additional persons or firms in order of their competence  
27 and qualifications ~~shall~~ must be selected after consultation with the  
28 agency selection committee, and negotiations ~~shall~~ must be  
29 continued in the same manner until agreement is reached.

30 (8) State Engineer's Office Review. The head of the using  
31 agency shall submit the following documents to the State  
32 Engineer's Office for its review:

33 (a) the written report of the agency selection committee,  
34 listing the persons or firms that responded to the invitation to  
35 submit information and enumerating the reasons of the committee  
36 for selecting the particular ones to be interviewed;

37 (b) the written ranking report of the agency selection  
38 committee and all data substantiating the determinations made in  
39 that report; and

40 (c) the tentative contract between the using agency and the  
41 selected person or firm.

42 (9) Approval or Disagreement by State Engineer's Office. The  
43 State Engineer's Office ~~shall have~~ has ten days to review the data

1 submitted by the agency selection committee, ~~to determine the~~  
2 ~~volume of work previously awarded to the firm by the State, with~~  
3 ~~the object of effecting an equitable distribution of contracts among~~  
4 ~~qualified firms,~~ and to determine its position with respect to the  
5 particular person or firm recommended for approval by the agency.  
6 If the State Engineer's Office disagrees with the proposal, it may  
7 contest the proposal by submitting the matter to the board for  
8 decision. In the event of approval, the State Engineer's Office  
9 shall notify immediately ~~notify~~ in writing the using agency and the  
10 person or firm selected of the award and ~~thereby~~ authorize the  
11 using agency to execute a contract with the selected person or firm.  
12 In the event of disagreement, the State Engineer's Office  
13 immediately shall notify ~~immediately notify~~ the using agency in  
14 writing of its intention to contest the ranking and the reasons  
15 ~~therefore for it~~. All contract negotiations by the governing body  
16 shall must be suspended pending a decision by the board  
17 concerning a contested ranking. The board shall hear ~~any such~~  
18 contests at its next regularly scheduled meeting ~~subsequent to~~ after  
19 notification of the using agency. If the board rules in support of  
20 the State Engineer's Office position, the using agency shall submit  
21 the name of another person or firm to the State Engineer's Office  
22 for consideration, selected in accordance with the procedures  
23 prescribed ~~herein in this section~~. If the board rules in support of  
24 the using agency, the using agency shall must be notified in  
25 writing and ~~thereby~~ authorized to execute a contract with the  
26 selected person or firm.”

27

28 SECTION 46. Section 11-35-3230 of the 1976 Code, as last  
29 amended by Act 153 of 1997, is further amended to read:

30

31 “Section 11-35-3230. (1) Procurement Procedures for Certain  
32 Contracts. ~~All~~ A governmental ~~bodies~~ body securing  
33 architect-engineer or land surveying service which is estimated not  
34 to exceed twenty-five thousand dollars may ~~employ the architects,~~  
35 ~~engineers, or land surveyors~~ award contracts by direct negotiation  
36 and selection, taking into account:

- 37 (a) the nature of the project;  
38 (b) the proximity of the architect-engineer or land surveying  
39 services to the project;  
40 (c) the capability of the architect, engineer, or land surveyor  
41 to produce the required service within a reasonable time;  
42 (d) past performance; and  
43 (e) ability to meet project budget requirements.

1 (2) Maximum Fees Payable to One Person or Firm. Fees paid  
2 during the twenty-four month period immediately preceding  
3 negotiation of the contract by ~~any~~ a single governmental body for  
4 professional services performed by ~~any one~~ an  
5 architectural-engineering or land surveying firm pursuant to  
6 Section 11-35-3230(1) ~~shall~~ may not exceed seventy-five thousand  
7 dollars. ~~All persons~~ Persons or firms seeking to render  
8 professional services pursuant to this section shall furnish the  
9 governmental body with whom the firm is negotiating a list of  
10 professional services, including fees paid ~~therefore~~ for them,  
11 performed for the governmental body during the fiscal year  
12 immediately preceding the fiscal year in which the negotiations are  
13 occurring and during the fiscal year in which the negotiations are  
14 occurring.

15 (3) ~~Approval~~ Submission of Contracts ~~by to~~ State Engineer's  
16 Office. ~~All Copies of~~ contracts, including the negotiated scope of  
17 services and fees, awarded pursuant to this section ~~shall~~ must be  
18 submitted ~~for approval~~ to the State Engineer's Office ~~in~~  
19 ~~accordance with regulations to be established by the board prior to~~  
20 ~~the awarding and execution of the contracts for information.~~

21 (4) Splitting of Larger Projects Prohibited. ~~No using~~ A agency  
22 may not break a project into small projects for the purpose of  
23 circumventing the provisions of Section 11-35-3220 and this  
24 section.”

25  
26 SECTION 47. Section 11-35-3240 of the 1976 Code, as last  
27 amended by Act 153 of 1997, is further amended to read:

28  
29 “Section 11-35-3240. As relates to this code and the ensuing  
30 regulations, a ‘Manual for Planning and Execution of State  
31 Permanent Improvements’ ~~shall~~ may be published by the board or  
32 its designee for use by governmental bodies and included, by  
33 reference, in the regulations of the board. The manual may be  
34 revised as the board ~~deems~~ considers necessary, except that  
35 proposed changes are not effective until the board has provided the  
36 public at least sixty days to make written comments after notice of  
37 the proposed changes is published in South Carolina Business  
38 Opportunities.”

39  
40 SECTION 48. Section 11-35-3245 of the 1976 Code, as last  
41 amended by Act 153 of 1997, is further amended to read:

42

1 “Section 11-35-3245. (a) ~~No~~ An architect or engineer  
2 performing design work, or construction manager performing  
3 construction management services as described in Section  
4 11-35-2910(3), ~~pursuant to~~ under a contract awarded ~~under any~~  
5 ~~provision of this chapter~~ pursuant to the provisions of Section  
6 11-35-3220 or Section 11-35-3230, may not perform other work,  
7 by later amendment or separate contract award, on that project as a  
8 contractor or subcontractor either directly or through a business in  
9 which he or his architectural engineering or construction  
10 management firm has greater than a five percent interest.

11 (b) For purposes of this section, safety compliance and other  
12 incidental construction support activities performed by the  
13 construction manager are not considered work performed as a  
14 contractor or subcontractor. ~~Should~~ If the construction manager  
15 ~~perform or be~~ performs or is responsible for safety compliance and  
16 other incidental construction support activities, and these support  
17 activities are in noncompliance with the provisions of Section  
18 41-15-210, then the construction management firm is subject to all  
19 applicable fines and penalties.”

20  
21 SECTION 49. Section 11-35-3410(1) and (3) of the 1976 Code,  
22 as last amended by Act 153 of 1997, is further amended to read:

23  
24 “(1) Contract Clauses. The board may promulgate regulations  
25 requiring the inclusion in state supplies, ~~and~~ services, and  
26 information technology contracts of clauses providing for  
27 adjustments in prices, time of performance, or other contract  
28 provisions, as appropriate, and covering the following subjects:

29 (a) the unilateral right of a governmental body to order in  
30 writing changes in the work within the scope of the contract and  
31 temporary stopping of the work or delaying performance; and

32 (b) variations occurring between estimated quantities of  
33 work in a contract and actual quantities.

34 (3) Additional Contract Clauses. The board shall be authorized  
35 to promulgate regulations requiring the inclusion in state supplies,  
36 ~~and~~ services, and information technology contracts of clauses  
37 providing for appropriate remedies and covering the following  
38 subjects:

39 (a) specified excuses for delay or nonperformance;

40 (b) termination of the contract for default; and

41 (c) termination of the contract in whole or in part for the  
42 convenience of the governmental body.”

43

1 SECTION 50. Section 11-35-3510 of the 1976 Code, as last  
2 amended by Act 153 of 1997, is further amended to read:

3

4 “Section 11-35-3510. The board may promulgate regulations  
5 setting forth cost principles ~~which shall~~ that must be used to  
6 determine the allowability of incurred costs for the purpose of  
7 reimbursing costs under provisions in supplies, and services, and  
8 information technology contracts ~~which that~~ provide for the  
9 reimbursement of costs.”

10

11 SECTION 51. Section 11-35-3820 of the 1976 Code, as last  
12 amended by Act 153 or 1997, is further amended to read:

13

14 “Section 11-35-3820. Except as provided in Section 11-35-1580  
15 and Section 11-35-3830 and the regulations pursuant ~~thereto to~~  
16 them, the sale of all state-owned supplies, ~~property~~, or personal  
17 property not in actual public use ~~shall must~~ be conducted and  
18 directed by the ~~Office of General Services~~ designated board office.  
19 ~~Such~~ The sales shall must be held at such places and in ~~such a~~  
20 manner as in the judgment of the ~~Office of General Services~~ shall  
21 be designated board office is most advantageous to the State.  
22 Unless otherwise determined, sales ~~shall must~~ be by either public  
23 auction or competitive sealed bid to the highest bidder. Each  
24 governmental body shall inventory and report to the ~~Office of~~  
25 ~~General Services~~ designated board office all surplus personal  
26 property not in actual public use held by that ~~agency governmental~~  
27 body for sale. The ~~Office of General Services~~ designated board  
28 office shall deposit the proceeds from ~~such the~~ sales, less expense  
29 of the sales, in the state general fund or as otherwise directed by  
30 regulation. This policy and procedure ~~shall apply~~ applies to all  
31 governmental bodies unless exempt by law.”

32

33 SECTION 52. Section 11-35-3840 of the 1976 Code, as last  
34 amended by Act 153 of 1997, is further amended to read:

35

36 “Section 11-35-3840. The ~~Office of General Services of the~~  
37 State Budget and Control Board may license for public sale  
38 publications ~~and, including~~ South Carolina Business Opportunities,  
39 materials pertaining to training programs, and information  
40 technology products ~~which that~~ are developed during the normal  
41 course of the ~~Office’s~~ board’s activities. ~~Such~~ The items ~~shall~~  
42 must be licensed at ~~such~~ reasonable costs ~~as are~~ established in  
43 accordance with the cost of the items. All proceeds from the sale



1 of the publications and materials ~~shall~~ must be placed in a revenue  
2 account and expended for the cost of providing ~~such~~ the services.”

3  
4 SECTION 53. Section 11-35-4210 of the 1976 Code, as last  
5 amended by Act 153 of 1997, is further amended to read:

6  
7 “Section 11-35-4210. (1) Right to Protest; Exclusive Remedy.

8 (a) ~~Any~~ A prospective bidder, offeror, contractor, or  
9 subcontractor who is aggrieved in connection with the solicitation  
10 of a contract shall protest to the appropriate chief procurement  
11 officer in the manner stated in subsection (2)(a) ~~below~~ within  
12 fifteen days of the date of issuance of the Invitation For Bids or  
13 Requests for Proposals or other solicitation documents, whichever  
14 is applicable, or any amendment ~~thereto~~ to it, if the amendment is  
15 at issue. An Invitation for Bids or Request for Proposals or other  
16 solicitation document, not including an amendment to it, is  
17 considered to have been issued on the date required notice of the  
18 issuance is given in accordance with this code.

19 (b) Any actual bidder, offeror, contractor, or subcontractor  
20 who is aggrieved in connection with the intended award or award  
21 of a contract shall protest to the appropriate chief procurement  
22 officer in the manner stated in subsection (2)(b) ~~below~~ within  
23 ~~fifteen~~ ten days of the date award or notification of intent to award,  
24 whichever is earlier, is posted in accordance with this code; except  
25 that a matter that could have been raised pursuant to (a) as a protest  
26 of the solicitation may not be raised as a protest of the award or  
27 intended award of a contract.

28 (c) The rights and remedies granted in this article to a  
29 ~~disappointed bidder, offeror, contractor, or subcontractor~~ bidders,  
30 offerors, contractors, or subcontractors, either actual or  
31 prospective, are to the exclusion of all other rights and remedies of  
32 ~~such disappointed bidder, offeror, contractor, or subcontractor~~ the  
33 bidders, offerors, contractors, or subcontractors against the State ~~at~~  
34 ~~common law or otherwise for the loss or potential loss of an award~~  
35 ~~of a contract under the South Carolina Consolidated Procurement~~  
36 ~~Code.~~

37 (d) The rights and remedies granted by subsection (1) and  
38 Section 11-35-4410(1)(b) are not available for contracts with an  
39 actual or potential value of up to fifty thousand dollars.

40 (2) Protest Procedure. (a) A protest ~~under~~ pursuant to  
41 subsection (1)(a) ~~above~~ shall must be in writing, ~~submitted to~~ filed  
42 with the appropriate chief procurement officer, and ~~shall~~ set forth  
43 the grounds of the protest and the relief requested with enough

1 particularity to give notice of the issues to be decided. The protest  
2 must be received by the appropriate chief procurement officer  
3 within the time provided in subsection (1).

4 (b) A protest pursuant to subsection (1)(b) must be in writing  
5 and must be received by the appropriate chief procurement officer  
6 within the time limits established by subsection (1)(b). At any  
7 time after filing a protest, but no later than fifteen days after the  
8 date award or notification of intent to award, whichever is earlier,  
9 is posted in accordance with this code, a protestant may amend a  
10 protest that was first submitted within the time limits established  
11 by subsection (1)(b). A protest, including amendments, must set  
12 forth both the grounds of the protest and the relief requested with  
13 enough particularity to give notice of the issues to be decided.

14 (3) Duty and Authority to Attempt to Settle Protests. ~~Prior to~~  
15 ~~Before~~ commencement of an administrative review as provided in  
16 subsection (4), the appropriate chief procurement officer, the head  
17 of the purchasing agency, or their designees ~~thereof shall~~ may  
18 attempt to settle by mutual agreement a protest of an aggrieved  
19 bidder, offeror, contractor, or subcontractor, actual or prospective,  
20 concerning the solicitation or award of the contract. The  
21 appropriate chief procurement officer, ~~the head of the purchasing~~  
22 ~~agency, or designees thereof shall have~~ his designee has the  
23 authority to approve any settlement reached by mutual agreement.

24 (4) Administrative Review and Decision. If in the opinion of  
25 the appropriate chief procurement officer, after reasonable attempt,  
26 a protest cannot be settled by mutual agreement, the appropriate  
27 chief procurement officer shall ~~promptly~~ promptly conduct  
28 administrative review. The appropriate chief procurement officer  
29 or his designee shall commence the administrative review no later  
30 than fifteen business days after the deadline for receipt of a protest  
31 has expired and shall issue a decision in writing within ten days of  
32 completion of the review. The decision ~~shall~~ must state the  
33 reasons for the action taken.

34 (5) Notice of Decision. A copy of the decision under  
35 subsection (4) ~~of this section~~ along with a statement of appeal  
36 rights ~~under~~ pursuant to Section 11-35-4210(6) ~~shall~~ must be  
37 mailed or otherwise furnished immediately to the protestant and  
38 ~~any~~ other party intervening. The appropriate chief procurement  
39 officer, ~~or his designee, shall~~ also shall post a copy of the decision  
40 at a date and place communicated to all parties participating in the  
41 administrative review, and ~~such~~ the posted decision ~~shall~~ must  
42 indicate the date of posting on its face and ~~shall~~ must be

1 accompanied by a statement of the right to appeal provided in  
2 Section 11-35-4210(6).

3 (6) Finality of Decision. A decision ~~under~~ pursuant to  
4 ~~subsection (4) of this section shall be~~ is final and conclusive,  
5 unless fraudulent, or unless ~~any~~ a person adversely affected by the  
6 decision requests a further administrative review by the  
7 Procurement Review Panel ~~under~~ pursuant to Section  
8 11-35-4410(1) within ten days of posting of the decision in  
9 accordance with ~~Section 11-35-4210~~ subsection (5). The request  
10 for review ~~shall~~ must be directed to the appropriate chief  
11 procurement officer, who shall forward the request to the panel, or  
12 to the Procurement Review Panel, and ~~shall~~ must be in writing,  
13 setting forth the reasons ~~why the person disagrees~~ for disagreement  
14 with the decision of the appropriate chief procurement officer. The  
15 person also may ~~also~~ request a hearing before the Procurement  
16 Review Panel. The appropriate chief procurement officer and an  
17 affected governmental body shall have the opportunity to  
18 participate fully in a later review or appeal, administrative or  
19 judicial.

20 (7) Automatic Stay of Procurement During Protests. In the  
21 event of a timely protest ~~under~~ pursuant to subsection (1) ~~above~~,  
22 the State shall not proceed further with the solicitation or award of  
23 the contract until ten days after a decision is ~~rendered~~ posted by the  
24 appropriate chief procurement officer, or, in the event of timely  
25 appeal to the Procurement Review Panel, until a decision is  
26 rendered by the panel; ~~provided, however, except~~ that solicitation  
27 or award of a protested contract ~~will~~ is not be stayed if the  
28 appropriate chief procurement officer, after consultation with the  
29 head of the using agency, makes a written determination that the  
30 solicitation or award of the contract without further delay is  
31 necessary to protect the best interests of the State.

32 (8) Notice of Chief Procurement Officer Address. Notice of  
33 the address of the appropriate chief procurement officer must be  
34 included in every notice of an intended award and in every  
35 invitation for bids, request for proposals, or other type  
36 solicitation.”

37  
38 SECTION 54. Section 11-35-4220 of the 1976 Code, as last  
39 amended by Act 153 of 1997, is further amended to read:

40  
41 “Section 11-35-4220. (1) Authority. After reasonable notice  
42 to the person or firm involved, and a reasonable opportunity for  
43 ~~such~~ that person or firm to be heard, the appropriate chief

1 procurement officer ~~shall have~~ has the authority to debar a person  
2 for cause from consideration for award of contracts or subcontracts  
3 ~~provided that~~ if doing so is in the best interest of the State and  
4 there is probable cause for debarment. The appropriate chief  
5 procurement officer also may ~~also~~ suspend a person or firm from  
6 consideration for award of contracts or subcontracts during an  
7 investigation where there is probable cause for debarment. The  
8 period of debarment or suspension ~~shall be~~ is as prescribed by the  
9 appropriate chief procurement officer.

10 (2) Causes for Debarment or Suspension. The causes for  
11 debarment or suspension shall include, but not be limited to, ~~the~~  
12 following:

13 (a) conviction for commission of a criminal offense as an  
14 incident to obtaining or attempting to obtain a public or private  
15 contract or subcontract, or in the performance of ~~such~~ the contract  
16 or subcontract;

17 (b) conviction under state or federal statutes of  
18 embezzlement, theft, forgery, bribery, falsification or destruction  
19 of records, receiving stolen property, or ~~any other~~ another offense  
20 indicating a lack of business integrity or professional honesty  
21 which currently, seriously, and directly affects responsibility as a  
22 state contractor;

23 (c) conviction under state or federal antitrust laws arising  
24 out of the submission of bids or proposals;

25 (d) violation of contract provisions, as set forth below, of a  
26 character ~~which is~~ regarded by the appropriate chief procurement  
27 officer to be so serious as to justify debarment action:

28 (i) deliberate failure without good cause to perform in  
29 accordance with the specifications or within the time limit  
30 provided in the contract; or

31 (ii) a recent record of failure to perform or of  
32 unsatisfactory performance in accordance with the terms of one or  
33 more contracts; ~~provided except~~, that failure to perform or  
34 unsatisfactory performance caused by acts beyond the control of  
35 the contractor ~~shall~~ must not be considered ~~to be~~ a basis for  
36 debarment;

37 (e) violation of an order of a chief procurement officer or the  
38 Procurement Review Panel; and

39 (f) any other cause the appropriate chief procurement officer  
40 determines to be so serious and compelling as to affect  
41 responsibility as a state contractor or subcontractor, including  
42 debarment by another governmental entity for any cause listed  
43 ~~herein~~ in this subsection.

1 (3) Decision. The appropriate chief procurement officer shall  
2 issue a written decision to debar or suspend within ten days of the  
3 completion of his administrative review of the matter. The  
4 decision ~~shall~~ must state the action taken, the specific reasons  
5 ~~therefore for it~~, and the period of debarment or suspension, if any.

6 (4) Notice of Decision. A copy of the decision ~~under~~ pursuant  
7 to subsection (3) ~~of this section~~ and a statement of appeal rights  
8 ~~under pursuant to~~ Section 11-35-4220(5) ~~shall~~ must be mailed or  
9 otherwise furnished immediately to the debarred or suspended  
10 person and any other party intervening. The appropriate chief  
11 procurement officer also shall ~~also~~ post a copy of the decision at a  
12 time and place communicated to all parties participating in the  
13 administrative review and ~~such~~ the posted decision ~~shall~~ must  
14 indicate the date of posting on its face and shall be accompanied  
15 by a statement of the right to appeal provided in Section  
16 11-35-4220(5).

17 (5) Finality of Decision. A decision ~~under~~ pursuant to  
18 subsection (3) ~~of this section shall be~~ is final and conclusive,  
19 unless fraudulent, or unless the debarred or suspended person  
20 requests further administrative review by the Procurement Review  
21 Panel ~~under pursuant to~~ Section 11-35-4410(1), within ten days of  
22 the posting of the decision in accordance with Section  
23 11-35-4220(4). The request for review ~~shall~~ must be directed to  
24 the appropriate chief procurement officer, who shall forward the  
25 request to the panel, or to the Procurement Review Panel, and ~~shall~~  
26 must be in writing, setting forth the reasons why the person  
27 disagrees with the decision of the appropriate chief procurement  
28 officer. The person ~~may~~ may also may request a hearing before the  
29 Procurement Review Panel. The appropriate chief procurement  
30 officer and any affected governmental body must have the  
31 opportunity to participate fully in any review or appeal,  
32 administrative or legal.

33 (6) Debarment constitutes debarment of all divisions or other  
34 organizational elements of the contractor, unless the debarment  
35 decision is limited by its terms to specific divisions, organization  
36 elements, or commodities. The debarring official may extend the  
37 debarment decision to include any principals and affiliates of the  
38 contractor if they are specifically named and given written notice  
39 of the proposed debarment and an opportunity to respond. For  
40 purposes of this section, business concerns, organizations, or  
41 individuals are affiliates of each other if, directly or indirectly,  
42 either one controls or has the power to control the other, or a third  
43 party controls or has the power to control both. Indications of

1 control include, but are not limited to, interlocking management or  
2 ownership, identity of interests among family members, shared  
3 facilities and equipment, common use of employees, or a business  
4 entity organized following the debarment, suspension, or proposed  
5 debarment of a contractor which has the same or similar  
6 management, ownership, or principal employees as the contractor  
7 that was debarred, suspended, or proposed for debarment. For  
8 purposes of this section, the term ‘principals’ means officers,  
9 directors, owners, partners, and persons having primary  
10 management or supervisory responsibilities within a business  
11 entity including, but not limited to, a general manager, plant  
12 manager, head of a subsidiary, division, or business segment, and  
13 similar positions.”

14  
15 SECTION 55. Section 11-35-4230 of the 1976 Code, as last  
16 amended by Act 153 of 1997, is further amended to read:

17  
18 “Section 11-35-4230. (1) Applicability. This section applies to  
19 controversies between ~~the State~~ a governmental body and a  
20 contractor or subcontractor, when the subcontractor is the real  
21 party in interest, which arise under or by virtue of a contract  
22 between them including, but not limited to, controversies based  
23 upon breach of contract, mistake, misrepresentation, or other cause  
24 for contract modification or rescission. The procedure set forth in  
25 this section ~~shall constitute~~ constitutes the exclusive means of  
26 resolving a controversy between ~~the State~~ a governmental body  
27 and a contractor or subcontractor, when the subcontractor is the  
28 real party in interest, concerning a contract solicited and awarded  
29 ~~under~~ pursuant to the provisions of the South Carolina  
30 Consolidated Procurement Code.

31 (2) Request for Resolution; Time for Filing. Either the  
32 contracting state agency or the contractor or subcontractor, when  
33 the subcontractor is the real party in interest, may initiate  
34 resolution proceedings before the appropriate chief procurement  
35 officer by submitting a request for resolution to the appropriate  
36 chief procurement officer in writing setting forth the ~~general~~  
37 specific nature of the controversy and the specific relief requested  
38 with enough particularity to give notice of ~~the issues~~ every issue  
39 to be decided. A request for resolution of contract controversy must  
40 be filed within one year of the date the contractor last performs  
41 work under the contract; ~~provided, however, except~~ that in the  
42 case of latent defects a request for resolution of a contract  
43 controversy must be filed within ~~one year~~ three years of the date

1 the requesting party first knows or should know of the grounds  
2 giving rise to the request for resolution.

3 (3) Duty and Authority to Attempt to Settle Contract  
4 Controversies. ~~Prior to~~ Before commencement of an  
5 administrative review as provided in subsection (4), the  
6 appropriate chief procurement officer or his designee shall attempt  
7 to settle by mutual agreement a contract controversy brought ~~under~~  
8 pursuant to this section. The appropriate chief procurement officer  
9 ~~shall have~~ has the authority to approve any settlement reached by  
10 mutual agreement.

11 (4) Administrative Review and Decision. If, in the opinion of  
12 the appropriate chief procurement officer, after reasonable attempt,  
13 a contract controversy cannot be settled by mutual agreement, the  
14 appropriate chief procurement officer or his designee ~~shall~~  
15 promptly shall conduct an administrative review and ~~shall~~ issue a  
16 decision in writing within ten days of completion of the review.  
17 The decision ~~shall~~ must state the reasons for the action taken.

18 (5) Notice of Decision. A copy of the decision ~~under~~ pursuant  
19 to subsection (4) ~~of this section~~ and a statement of appeal rights  
20 under Section 11-35-4230(6) ~~shall~~ must be mailed or otherwise  
21 furnished immediately to all parties participating in the  
22 administrative review proceedings. The appropriate chief  
23 procurement officer also shall ~~also~~ post a copy of the decision at a  
24 time and place communicated to all parties participating in the  
25 administrative review, and ~~such the~~ posted decision ~~shall~~ must  
26 indicate the date of posting on its face and ~~shall~~ must be  
27 accompanied by a statement of the right to appeal provided in  
28 Section 11-35-4230(6).

29 (6) Finality of Decision. A decision ~~under~~ pursuant to  
30 subsection (4) ~~of this section shall be~~ is final and conclusive,  
31 unless fraudulent; or unless ~~any~~ a person adversely affected  
32 requests a further administrative review by the Procurement  
33 Review Panel ~~under~~ pursuant to Section 11-35-4410(1) within ten  
34 days of the posting of the decision in accordance with Section  
35 11-35-4230(5). The request for review ~~shall~~ must be directed to  
36 the appropriate chief procurement officer, who shall forward the  
37 request to the panel, or to the Procurement Review Panel, and ~~shall~~  
38 must be in writing setting forth the reasons why the person  
39 disagrees with the decision of the appropriate chief procurement  
40 officer. The person also may ~~also~~ request a hearing before the  
41 Procurement Review Panel. The appropriate chief procurement  
42 officer and any affected governmental body shall have the

1 opportunity to participate fully in a later review or appeal,  
2 administrative or legal.”

3  
4 SECTION 56. Section 11-35-4330 of the 1976 Code, as last  
5 amended by Act 153 of 1997, is further amended to read:

6  
7 “Section 11-35-4330. (1) Signature on Protest Constitutes  
8 Certificate. The signature of an attorney or party on a request for  
9 review, protest, motion, or other document constitutes a certificate  
10 by the signer that the signer has read ~~such~~ the document, ~~that~~ to the  
11 best of ~~the signer’s~~ his knowledge, information, and belief formed  
12 after reasonable inquiry; it is well grounded in fact and is  
13 warranted by existing law or a good faith argument for the  
14 extension, modification, or reversal of existing law, and ~~that~~ it is  
15 not interposed for ~~any~~ an improper purpose, such as to harass, limit  
16 competition, or to cause unnecessary delay or needless increase in  
17 the cost of the procurement or of the litigation.

18 (2) Sanctions for Violations. If a request for review, protest,  
19 pleading, motion, or other document that is filed with the chief  
20 procurement officer or the Procurement Review Panel is signed in  
21 violation of this subsection ~~on or after appeal to the Procurement~~  
22 ~~Review Panel~~, the Procurement Review Panel, upon motion or  
23 upon it’s own initiative, may impose upon the person who signed  
24 it, a represented party, or both, an appropriate sanction, ~~which~~ that  
25 may include an order to pay to the other party or parties the  
26 amount of the reasonable expenses incurred because of the filing  
27 of the protest, pleading, motion, or other paper, including a  
28 reasonable attorney’s fee.

29 (3) Filing. A motion regarding a matter that is not otherwise  
30 before the panel may not be filed until after a final decision has  
31 been issued by the appropriate chief procurement officer. A  
32 motion for sanctions pursuant to this section must be filed with the  
33 panel no later than fifteen days after the later of either the filing of  
34 a request for review, protest, motion, or other document signed in  
35 violation of this section, or the issuance of an order that addresses  
36 the request for review, protest, motion, or other document that is  
37 the subject of the motion for sanctions.”

38  
39 SECTION 57. Section 11-35-4410 of the 1976 Code, as last  
40 amended by Act 178 of 1993, is further amended to read:

41



1 “Section 11-35-4410. (1) Creation. There is ~~hereby~~ created the  
2 South Carolina Procurement Review Panel which ~~shall be~~ is  
3 charged with the responsibility to review and determine de novo:  
4 (a) requests for review of written determinations of the chief  
5 procurement officers under Sections 11-35-4210(6),  
6 11-35-4220(5), and 11-35-4230(6); and  
7 (b) requests for review of other written determinations,  
8 decisions, policies, and procedures as arise from or concern the  
9 procurement of supplies, services, information technology, or  
10 construction procured in accordance with the provisions of this  
11 code and the ensuing regulations; ~~provided except that any a~~  
12 ~~matter which that~~ could have been brought before the chief  
13 procurement officers in a timely and appropriate manner ~~under~~  
14 pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but  
15 was not, ~~shall must~~ not be the subject of review under this  
16 paragraph. Requests for review under this paragraph ~~shall must~~ be  
17 submitted to the Procurement Review Panel in writing, setting  
18 forth the grounds, within fifteen days of the date of ~~such the~~  
19 written determinations, decisions, policies, and procedures.  
20 (2) Membership. The panel ~~shall must~~ be composed of:  
21 (a) [Deleted]  
22 (b) [Deleted]  
23 (c) [Deleted]  
24 (d) ~~the chairman, or his designee, of the Procurement Policy~~  
25 ~~Committee; [Deleted]~~  
26 (e) five members appointed by the Governor from the State  
27 at large who ~~shall must~~ be representative of the professions  
28 governed by this title including, but not limited to:  
29 (i) goods and services-;  
30 (ii) information technology procurements-;  
31 (iii) construction-;  
32 (iv) architects and engineers-;  
33 (v) construction management-; and  
34 (vi) land surveying services-;  
35 (f) two state employees appointed by the Governor.  
36 (3) Chairperson and Meetings. The panel shall elect a  
37 chairman from the members at large and shall meet as often as  
38 necessary to afford a swift resolution of the controversies  
39 submitted to it. ~~Five~~ Four members present and voting ~~shall~~  
40 constitute a quorum. In the case of a tie vote, the decision of the  
41 chief procurement office is final. At-large members of the panel  
42 ~~shall must~~ be paid per diem, mileage, and subsistence as provided  
43 by law for members of boards, commissions, and committees.

1 State employee members ~~shall~~ must be reimbursed for meals,  
2 lodging, and travel in accordance with current state allowances.

3 (4) Jurisdiction. ~~(a) Notwithstanding the provisions of Section~~  
4 ~~1-23-10, et seq. or any other provisions of law, the Administrative~~  
5 ~~Procedures Act does not apply to administrative reviews conducted~~  
6 ~~by either a chief procurement officer or the Procurement Review~~  
7 ~~Panel. ~~the~~ The Procurement Review Panel ~~shall be~~ is vested with~~  
8 the authority to:

9 ~~(a)(i)~~ (i) establish its own rules and procedures for the conduct  
10 of its business and the holding of its hearings;

11 ~~(b)(ii)~~ (ii) issue subpoenas;

12 ~~(c)(iii)~~ (iii) interview any person it ~~deems~~ considers necessary;  
13 and

14 ~~(d)(iv)~~ (iv) record all determinations.

15 (b) A party aggrieved by a subpoena issued pursuant to this  
16 provision shall apply to the panel for relief.

17 (5) Procedure. Within fifteen days of receiving a grievance  
18 filed ~~under~~ pursuant to Sections 11-35-4210(6), 11-35-4220(5),  
19 11-35-4230(6), or 11-35-4410(1)(b), the chairman shall either  
20 convene the review panel to conduct an administrative review-  
21 The or schedule a hearing to facilitate its administrative review.  
22 Except for grievances filed pursuant to Section 11-35-4230(6), the  
23 review panel shall record its determination within ~~thirty ten~~  
24 working days and shall communicate its decision to those involved  
25 in the determination. In matters designated by the review panel as  
26 complex, the review panel shall record its determination within  
27 thirty days. In the alternative, the chairman, within ten days, may  
28 appoint a hearing officer to conduct the administrative review and  
29 report his recommendations to the review panel for its  
30 determination. If a hearing officer is appointed, his report shall be  
31 submitted to the review panel within ten days after his  
32 appointment, and the review panel must still record its decision  
33 within thirty days after being convened for this purpose.

34 (6) Finality. ~~The~~ Notwithstanding another provision of law,  
35 including the Administrative Procedures Act, the decision of the  
36 Procurement Review Panel is final as to administrative review and  
37 may be appealed to the circuit court under the provisions of the  
38 South Carolina Administrative Procedures Act. The filing of an  
39 appeal does not automatically stay a decision of the panel.”

40  
41 SECTION 58. Section 11-35-5220 of the 1976 Code is amended  
42 by adding:  
43

1 “(6) Fee Waivers. Upon request by an MBE certified by the  
2 Small and Minority Business Assistance Office, user or  
3 subscription fees for services provided by the chief procurement  
4 officers may be waived for an MBE.”

5  
6 SECTION 59. Section 11-35-5230(A)(5) and (B)(2) of the 1976  
7 Code, as last amended by Act 76 of 1995, is further amended to  
8 read:

9  
10 “(5) ~~Insuring~~ Ensuring that the price ~~shall have~~ has been  
11 determined to be fair and reasonable, and competitive both to the  
12 State and to the contractor ~~and results in no loss to the State.~~

13 (2) The tax credit is limited to a maximum of ~~twenty-five~~ fifty  
14 thousand dollars annually. A firm ~~shall be~~ is eligible to claim a tax  
15 credit for a period of ~~five~~ ten years from the date the first income  
16 tax credit is claimed.”

17  
18 SECTION 60. Section 11-35-5240 of the 1976 Code, as last  
19 amended by Act 153 of 1997, is further amended to read:

20  
21 “Section 11-35-5240. (1) ~~In order to~~ To emphasize the use of  
22 minority small businesses, each agency director shall develop a  
23 Minority Business Enterprise (MBE) Utilization Plan. The MBE  
24 Utilization Plan ~~shall~~ must include, but not be limited to:

25 (a) the name of the governmental body;  
26 (b) a policy statement expressing a commitment by the  
27 governmental body to use ~~MBE's~~ MBEs in all aspects of  
28 procurement;

29 (c) the name of the coordinator responsible for monitoring  
30 the MBE Utilization Plan;

31 (d) goals that include ~~a reasonable percentage~~ expending  
32 with Minority Business Enterprises certified by the Office of Small  
33 and Minority Business Assistance an amount equal to ten percent  
34 of each governmental body's total ~~procurements directed toward~~  
35 minority vendors dollar amount of funds expended;

36 (e) solicitation of ~~qualified~~ certified minority vendors, a  
37 current list of which ~~shall~~ must be supplied by the Office of  
38 ~~General Services~~ Small and Minority Business Assistance, in each  
39 commodity category for which ~~such~~ the minority vendor is  
40 qualified. The current listing of qualified minority vendors ~~shall~~  
41 must be made available by the Office of ~~General Services~~ Small  
42 and Minority Business Assistance on a timely basis;

1 (f) procedures to be used when it is necessary to divide total  
2 project requirements into smaller tasks which will permit increased  
3 MBE participation;

4 (g) procedures to be used when the governmental body  
5 subcontracts the scope of service to another governmental body;  
6 the responsible governmental body may set goals for the  
7 subcontractor in accordance with the MBE goal and the  
8 responsible governmental body may allow the subcontractor to  
9 present a MBE Utilization Plan detailing its procedure to obtain  
10 minority business enterprise participation.

11 (2) MBE utilization plans ~~shall~~ must be submitted to the  
12 SMBAO for approval ~~not~~ no later than July thirtieth, annually.  
13 Upon petition by the governmental body, SMBAO may authorize  
14 an MBE utilization plan that establishes a goal of less than ten  
15 percent of the governmental body's total dollar amount of funds  
16 expended. Progress reports ~~shall~~ must be submitted to the SMBAO  
17 ~~not~~ no later than ~~ten~~ thirty days after the end of each fiscal quarter-  
18 and contain the following information:

19 (a) number of minority firms solicited;

20 (b) number of minority bids received;

21 (c) total dollar amount of funds expended on contracts  
22 awarded to minority bids—awarded firms certified pursuant to  
23 Section 11-35-5230; and

24 (d) total dollar amount of funds expended.

25 (3) For purposes of this section, and notwithstanding the  
26 Administrative Procedures Act, the executive director of the board  
27 shall establish a definition for the phrase 'total dollar amount of  
28 funds expended.'”

29  
30 SECTION 61. Section 11-35-5260 of the 1976 Code, as last  
31 amended by Act 153 of 1997, is further amended to read:

32  
33 “Section 11-35-5260. ~~Each governmental body~~ The Small and  
34 Minority Business Assistance Office shall report annually in  
35 writing to the ~~board~~ Governor concerning the number and dollar  
36 value of contracts awarded for each governmental body to eligible  
37 ~~minority businesses~~ a firm certified as a minority firm pursuant to  
38 Section 11-35-5230 during the preceding fiscal year. These  
39 records ~~shall~~ must be maintained to evaluate the progress of this  
40 program.”

41  
42 SECTION 62. The final two sentences of Section 11-35-5270 of  
43 the 1976 Code are amended to read:

