**South Carolina General Assembly**

123rd Session, 2019-2020

**A41, R52, S530**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Leatherman

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Introduced in the Senate on February 19, 2019

Introduced in the House on April 3, 2019

Last Amended on March 28, 2019

Passed by the General Assembly on May 9, 2019

Governor's Action: May 13, 2019, Signed

Summary: Procurement Code

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/19/2019 Senate Introduced and read first time ([Senate Journal‑page 5](file:///h:\sj\20190219.docx))

2/19/2019 Senate Referred to Committee on **Finance** ([Senate Journal‑page 5](file:///h:\sj\20190219.docx))

3/21/2019 Senate Committee report: Favorable with amendment **Finance** ([Senate Journal‑page 11](file:///h:\sj\20190321.docx))

3/27/2019 Senate Committee Amendment Adopted ([Senate Journal‑page 58](file:///h:\sj\20190327.docx))

3/27/2019 Senate Read second time ([Senate Journal‑page 58](file:///h:\sj\20190327.docx))

3/27/2019 Senate Roll call Ayes‑38 Nays‑0 ([Senate Journal‑page 58](file:///h:\sj\20190327.docx))

3/28/2019 Senate Amended ([Senate Journal‑page 13](file:///h:\sj\20190328.docx))

4/2/2019 Senate Read third time and sent to House ([Senate Journal‑page 22](file:///h:\sj\20190402.docx))

4/2/2019 Senate Roll call Ayes‑44 Nays‑0 ([Senate Journal‑page 22](file:///h:\sj\20190402.docx))

4/3/2019 House Introduced and read first time ([House Journal‑page 7](file:///h:\hj\20190403.docx))

4/3/2019 House Referred to Committee on **Ways and Means** ([House Journal‑page 7](file:///h:\hj\20190403.docx))

5/2/2019 House Committee report: Favorable **Ways and Means** ([House Journal‑page 1](file:///h:\hj\20190502.docx))

5/8/2019 House Requests for debate‑Rep(s).  Hill ([House Journal‑page 55](file:///h:\hj\20190508.docx))

5/8/2019 House Read second time ([House Journal‑page 55](file:///h:\hj\20190508.docx))

5/8/2019 House Roll call Yeas‑93 Nays‑7 ([House Journal‑page 63](file:///h:\hj\20190508.docx))

5/9/2019 House Read third time and enrolled

5/9/2019 Ratified R 52

5/13/2019 Signed By Governor

5/31/2019 Effective date 05/13/19

6/5/2019 Act No.  41

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**VERSIONS OF THIS BILL**

[2/19/2019](file:///p:\pprever\2019-20\530_20190219.docx)

[3/21/2019](file:///p:\pprever\2019-20\530_20190321.docx)

[3/27/2019](file:///p:\pprever\2019-20\530_20190327.docx)

[3/28/2019](file:///p:\pprever\2019-20\530_20190328.docx)

[5/2/2019](file:///p:\pprever\2019-20\530_20190502.docx)

(A41, R52, S530)

**AN ACT** **TO AMEND SECTION 11‑35‑20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PURPOSE AND POLICIES OF THE CONSOLIDATED PROCUREMENT CODE, SO AS TO PROVIDE THAT THE CODE MUST BE CONSTRUED AND APPLIED TO PROMOTE THE UNDERLYING PURPOSES AND POLICIES; BY ADDING SECTION 11‑35‑27 SO AS TO PROVIDE THAT NO PART OF THE CHAPTER MAY BE CONSIDERED IMPLIEDLY REPEALED BY SUBSEQUENT LEGISLATION; TO AMEND SECTION 11‑35‑40, RELATING TO THE APPLICATION OF THE PROCUREMENT CODE, SO AS TO PROVIDE THAT CERTAIN FAILURES TO COMPLY ARE NOT SUBJECT TO REVIEW UNDER ARTICLE 17; TO AMEND SECTION 11‑35‑70, RELATING TO SCHOOL DISTRICTS SUBJECT TO THE PROCUREMENT CODE, SO AS TO CHANGE THE REFERENCE TO THE OFFICE OF GENERAL SERVICES TO THE DIVISION OF PROCUREMENT SERVICES; TO AMEND SECTION 11‑35‑210, RELATING TO CERTAIN DETERMINATIONS, SO AS TO PROVIDE THAT ALL FINDINGS, DETERMINATIONS, DECISIONS, POLICIES, AND PROCEDURES ALLOWED BY THIS CHAPTER ARE EXEMPT FROM CERTAIN REQUIREMENTS; TO AMEND SECTION 11‑35‑310, RELATING TO DEFINITIONS, SO AS TO AMEND CERTAIN DEFINITIONS AND ADD DEFINITIONS OF “BUSINESS DAY”, “PERSON”, AND “PUBLIC FUNDS”; TO AMEND SECTION 11‑35‑410, RELATING TO PUBLIC ACCESS TO PROCUREMENT INFORMATION, SO AS TO PROVIDE THAT A GOVERNMENTAL BODY MAY KEEP PORTIONS OF A SOLICITATION CONFIDENTIAL AND PROVIDE FOR CERTAIN WRITTEN DISCLOSURES; TO AMEND SECTION 11‑35‑510, RELATING TO THE CENTRALIZATION OF MATERIALS MANAGEMENT AUTHORITY, SO AS TO PROVIDE THAT THE VESTING AUTHORITY IS ALSO SUBJECT TO SECTION 11‑35‑1560; TO AMEND SECTION 11‑35‑530, RELATING TO ADVISORY COMMITTEES, SO AS TO REMOVE CERTAIN REQUIREMENTS OF THE BOARD WORKING IN ACCORDANCE WITH REGULATIONS OF THE BOARD; TO AMEND SECTION 11‑35‑540, RELATING TO THE AUTHORITY AND DUTIES OF THE BOARD, SO AS TO REMOVE CERTAIN REQUIREMENTS OF THE CHIEF EXECUTIVE OFFICER IN RELATION TO A DESIGNATED BOARD OFFICE; TO AMEND SECTION 11‑35‑710, RELATING TO CERTAIN EXEMPTIONS, SO AS TO REQUIRE THE STATE FISCAL ACCOUNTABILITY AUTHORITY TO MAINTAIN AND POST PUBLICLY A RUNNING LIST OF ALL CURRENTLY EFFECTIVE ACTIONS TAKEN BY THE BOARD; TO AMEND SECTION 11‑35‑810, RELATING TO THE CREATION OF THE MATERIALS MANAGEMENT OFFICE, SO AS TO CHANGE THE OFFICE OF GENERAL SERVICES TO THE DIVISION OF PROCUREMENT SERVICES; TO AMEND SECTION 11‑35‑820, RELATING TO THE CREATION OF THE INFORMATION TECHNOLOGY MANAGEMENT OFFICE, SO AS TO PROVIDE THAT THE OFFICE IS RESPONSIBLE FOR ADMINISTERING ALL PROCUREMENT AND CONTRACTING ACTIVITIES UNDERTAKEN FOR GOVERNMENTAL BODIES INVOLVING INFORMATION TECHNOLOGY; TO AMEND SECTION 11‑35‑1210, RELATING TO CERTAIN CERTIFICATIONS, SO AS TO PROVIDE THAT UP TO CERTAIN DOLLAR AMOUNTS AN INDIVIDUAL GOVERNMENTAL BODY MAY MAKE DIRECT PROCUREMENTS NOT UNDER TERM CONTRACTS; TO AMEND SECTION 11‑35‑1230, RELATING TO AUDITING AND FISCAL REPORTING, SO AS TO REMOVE THE REQUIREMENT THAT THE DIVISION OF BUDGET ANALYSIS WITH THE COMPTROLLER GENERAL SHALL ASSUME RESPONSIBILITY FOR CERTAIN FISCAL REPORTING PROCEDURES; TO AMEND SECTION 11‑35‑1410, RELATING TO DEFINITIONS, SO AS TO ADD DEFINITIONS FOR “COMMERCIAL PRODUCT” AND “COMMERCIALLY AVAILABLE OFF‑THE‑SHELF PRODUCT”; TO AMEND SECTION 11‑35‑1510, RELATING TO THE METHODS OF SOURCE SELECTION, SO AS TO ADD SECTION 11‑35‑1535 TO THE LIST OF EXCEPTIONS; TO AMEND SECTION 11‑35‑1520, RELATING TO COMPETITIVE SEALED BIDDING, SO AS TO REMOVE CERTAIN REQUIREMENTS FOR DISCUSSION WITH BIDDERS; TO AMEND SECTION 11‑35‑1525, RELATING TO COMPETITIVE FIXED PRICE BIDDING, SO AS TO REMOVE CERTAIN PROVISIONS FOR DISCUSSION WITH RESPONSIVE BIDDERS AND REMEDIES; TO AMEND SECTION 11‑35‑1528, RELATING TO COMPETITIVE BEST VALUE BIDDING, SO AS TO REMOVE CERTAIN PROVISIONS FOR DISCUSSION WITH RESPONSIVE BIDDERS; TO AMEND SECTION 11‑35‑1529, RELATING TO COMPETITIVE ONLINE BIDDING, SO AS TO PROVIDE FOR PUBLIC NOTICE; TO AMEND SECTION 11‑35‑1530, RELATING TO COMPETITIVE SEALED PROPOSALS, SO AS TO PROVIDE THAT OFFERORS MUST BE ACCORDED FAIR AND EQUAL TREATMENT WITH RESPECT TO ANY OPPORTUNITY FOR DISCUSSIONS; BY ADDING SECTION 11‑35‑1535 SO AS TO PROVIDE FOR COMPETITIVE NEGOTIATIONS AND TO PROVIDE CERTAIN REQUIREMENTS; TO AMEND SECTION 11‑35‑1540, RELATING TO NEGOTIATIONS AFTER AN UNSUCCESSFUL COMPETITIVE SEALED BIDDING, SO AS TO PROVIDE THAT THE PROCUREMENT OFFICER, NOT THE PROCURING AGENCY, SHALL CONSIDER IF A BID IS UNREASONABLE; TO AMEND SECTION 11‑35‑1550, RELATING TO CERTAIN SMALL PURCHASE PROCEDURES, SO AS TO AMEND CERTAIN DOLLAR AMOUNT CAPS; TO AMEND SECTION 11‑35‑1560, RELATING TO SOLE SOURCE PROCUREMENT, SO AS TO PROVIDE FOR ADEQUATE PUBLIC NOTICE; TO AMEND SECTION 11‑35‑1570, RELATING TO EMERGENCY PROCUREMENTS, SO AS TO PROVIDE CERTAIN NOTICE OF THE AWARD; BY ADDING SECTION 11‑35‑1610 SO AS TO PROVIDE THAT A CHANGE OR MODIFICATION IN A CONTRACT MAY NOT ALTER A CONTRACT IN A MANNER INCONSISTENT WITH THIS CODE; TO AMEND SECTION 11‑35‑1810, RELATING TO THE RESPONSIBILITY OF BIDDERS AND OFFERORS, SO AS TO PROVIDE THAT CERTAIN COMMUNICATION IS PRIVILEGED; TO AMEND SECTION 11‑35‑1830, RELATING TO COST OR PRICING DATA, SO AS TO ADD COMPETITIVE NEGOTIATIONS PURSUANT TO SECTION 11‑35‑1535; BY ADDING SECTION 11‑35‑1840 SO AS TO PROVIDE THAT THE BOARD MAY PROMULGATE CERTAIN REGULATIONS; BY ADDING SECTION 11‑35‑2015 SO AS TO PROVIDE THAT A CONTRACT OR AMENDMENT IS NOT EFFECTIVE AGAINST A GOVERNMENTAL BODY UNLESS THE CONTRACT OR AMENDMENT IS IN WRITING AND SIGNED BY A CERTAIN OFFICER; TO AMEND SECTION 11‑35‑2030, RELATING TO MULTITERM CONTRACTS, SO AS TO PROVIDE THAT EVERY CONTRACT WITH A POTENTIAL DURATION EXCEEDING SEVEN YEARS MUST BE APPROVED BY THE BOARD; BY ADDING SECTION 11‑35‑2040 SO AS TO PROVIDE THAT CERTAIN LAWS ARE INAPPLICABLE TO CONTRACTS FOR THE PROCUREMENT OF COMMERCIAL PRODUCTS; BY ADDING SECTION 11‑35‑2050 SO AS TO PROVIDE THAT CERTAIN TERMS OR CONDITIONS IN A CONTRACT ARE VOID; TO AMEND SECTION 11‑35‑2410, RELATING TO THE FINALITY OF DETERMINATIONS, SO AS TO ADD CERTAIN SECTIONS; TO AMEND SECTION 11‑35‑2420, RELATING TO THE REPORTING OF ANTICOMPETITIVE PRACTICES, SO AS TO PROVIDE THAT CERTAIN COMMUNICATIONS TO THE OFFICE OF THE ATTORNEY GENERAL ARE PRIVILEGED; TO AMEND SECTION 11‑35‑3010, RELATING TO THE CHOICE OF PROJECT DELIVERY METHODS, SO AS TO PROVIDE THAT THE USE OF CERTAIN PROJECT DELIVERY METHODS MUST BE APPROVED BY THE BOARD; TO AMEND SECTION 11‑35‑3015, RELATING TO THE SOURCE SELECTION METHODS ASSIGNED TO PROJECT DELIVERY METHODS, SO AS TO ADD REFERENCES TO SECTION 11‑35‑1530 AND SECTION 11‑35‑1535; TO AMEND SECTION 11‑35‑3020, RELATING TO ADDITIONAL BIDDING PROCEDURES FOR CONSTRUCTION PROCUREMENT, SO AS TO PROVIDE THAT ADEQUATE NOTICE MUST BE GIVEN; TO AMEND SECTION 11‑35‑3023, RELATING TO PREQUALIFICATION ON STATE CONSTRUCTION, SO AS TO REMOVE CERTAIN REQUIREMENTS FOR A REQUEST FOR QUALIFICATIONS; TO AMEND SECTION 11‑35‑3024, RELATING TO ADDITIONAL PROCEDURES APPLICABLE TO PROCUREMENT OF CERTAIN PROJECT DELIVERY METHODS, SO AS TO PROVIDE THAT CERTAIN PROVISIONS DO NOT APPLY IF COMPETITIVE NEGOTIATIONS ARE CONDUCTED; TO AMEND SECTION 11‑35‑3030, RELATING TO BOND AND SECURITY, SO AS TO PROVIDE THAT CERTAIN SOLICITATIONS MAY PROVIDE FOR CERTAIN BOND AND SECURITY REQUIREMENTS; TO AMEND SECTION 11‑35‑3040, RELATING TO CONTRACT CLAUSES AND THEIR ADMINISTRATION, SO AS TO PROVIDE THAT CERTAIN CONTRACTS MAY INCLUDE CLAUSES PROVIDING FOR THE UNILATERAL RIGHT OF A GOVERNMENTAL BODY TO ORDER IN WRITING CERTAIN CHANGES WITHIN THE GENERAL SCOPE OF THE CONTRACT; TO AMEND SECTION 11‑35‑3070, RELATING TO THE APPROVAL OF CERTAIN CHANGES WHICH DO NOT ALTER SCOPE OR INTENT OR EXCEED APPROVED BUDGET, SO AS TO PROVIDE THAT A GOVERNMENTAL BODY MAY APPROVE CERTAIN AMENDMENTS CONSISTENT WITH ANY APPLICABLE REGULATION OF THE BOARD; TO AMEND SECTION 11‑35‑3220, RELATING TO QUALIFICATIONS‑BASED SELECTION PROCEDURES, SO AS TO PROVIDE THAT ADEQUATE NOTICE OF THE INVITATION MUST BE GIVEN; TO AMEND SECTION 11‑35‑3230, RELATING TO THE EXCEPTION FOR SMALL ARCHITECT‑ENGINEER AND LAND SURVEYING SERVICES CONTRACTS, SO AS TO PROVIDE THAT A GOVERNMENTAL BODY MAY NOT NEGOTIATE WITH A FIRM UNLESS ANY UNSUCCESSFUL NEGOTIATIONS WITH A DIFFERENT FIRM HAVE BEEN CONCLUDED IN WRITING; BY ADDING SECTION 11‑35‑3305 SO AS TO PROVIDE THAT A PROCUREMENT OFFICER MAY ESTABLISH CONTRACTS PROVIDING FOR AN INDEFINITE QUANTITY OF CERTAIN SUPPLIES, SERVICES, OR INFORMATION TECHNOLOGY; TO AMEND SECTION 11‑35‑3310, RELATING TO INDEFINITE DELIVERY CONTRACTS, SO AS TO REMOVE PROVISIONS RELATING TO CONSTRUCTION SERVICES; BY ADDING SECTION 11‑35‑3320 SO AS TO DEFINE “TASK ORDER CONTRACT” AND TO PROVIDE WHEN A GOVERNMENTAL BODY MAY ENTER INTO A TASK ORDER CONTRACT; TO AMEND SECTION 11‑35‑3410, RELATING TO CONTRACT CLAUSES AND THEIR ADMINISTRATION, SO AS TO PROVIDE THAT CERTAIN CONTRACTS MAY INCLUDE CLAUSES PROVIDING FOR THE UNILATERAL RIGHT OF A GOVERNMENTAL BODY TO ORDER IN WRITING CERTAIN CHANGES WITHIN THE GENERAL SCOPE OF THE CONTRACT; TO AMEND SECTION 11‑35‑3820, RELATING TO THE ALLOCATION OF PROCEEDS FOR SALE OR DISPOSAL OF SURPLUS SUPPLIES, SO AS TO CHANGE REFERENCES TO THE DIVISION OF GENERAL SERVICES TO THE DEPARTMENT OF ADMINISTRATION; TO AMEND SECTION 11‑35‑3830, RELATING TO TRADE‑IN SALES, SO AS TO CHANGE REFERENCES TO THE BOARD TO THE DEPARTMENT OF ADMINISTRATION; TO AMEND SECTION 11‑35‑3840, RELATING TO LICENSING FOR PUBLIC SALE OF CERTAIN PUBLICATIONS AND MATERIALS, SO AS TO CHANGE A REFERENCE TO THE DIVISION OF GENERAL SERVICES TO THE DIVISION OF PROCUREMENT SERVICES; TO AMEND SECTION 11‑35‑3850, RELATING TO THE SALE OF UNSERVICEABLE SUPPLIES, SO AS TO CHANGE REFERENCES TO THE BOARD TO THE DEPARTMENT OF ADMINISTRATION; TO AMEND SECTION 11‑35‑4210, RELATING TO CERTAIN PROTESTS AND PROCEDURES, SO AS TO PROVIDE THAT AN ACTUAL BIDDER, OFFEROR, CONTRACTOR, OR SUBCONTRACTOR WHO IS AGGRIEVED SHALL NOTIFY THE APPROPRIATE OFFICER IN WRITING; TO AMEND SECTION 11‑35‑4215, RELATING TO THE POSTING OF BOND OR IRREVOCABLE LETTER OF CREDIT, SO AS TO PROVIDE THAT THE AMOUNT RECOVERED MAY NOT EXCEED FIFTEEN THOUSAND DOLLARS; TO AMEND SECTION 11‑35‑4220, RELATING TO THE AUTHORITY TO DEBAR OR SUSPEND, SO AS TO PROVIDE THAT A VIOLATION OF THE ETHICS, GOVERNMENT ACCOUNTABILITY, AND CAMPAIGN REFORM ACT OF 1991 IS A CAUSE FOR DEBARMENT; TO AMEND SECTION 11‑35‑4230, RELATING TO THE AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES, SO AS TO PROVIDE THAT THE DIVISION OF PROCUREMENT SERVICES MAY INITIATE AND PURSUE RESOLUTION OF CERTAIN CONTRACT CONTROVERSIES; TO AMEND SECTION 11‑35‑4310, RELATING TO SOLICITATIONS OR AWARDS IN VIOLATION OF THE LAW, SO AS TO PROVIDE THAT CERTAIN REMEDIES MAY BE GRANTED ONLY AFTER REVIEW; BY ADDING SECTION 11‑35‑4315 SO AS TO PROVIDE THAT THE BOARD MAY PROVIDE BY REGULATION APPROPRIATE ACTION WHERE A CONTRACT AWARD OR MODIFICATION IS IN VIOLATION OF THE PROCUREMENT CODE; BY ADDING SECTION 11‑35‑4340 SO AS TO PROVIDE THAT THERE IS NO REMEDY AGAINST THE STATE OTHER THAN THOSE PROVIDED IN THIS CHAPTER; TO AMEND SECTION 11‑35‑4410, RELATING TO THE PROCUREMENT REVIEW PANEL, SO AS TO PROVIDE THAT AN APPEAL ONLY MAY BE MADE TO THE COURT OF APPEALS; BY ADDING SECTION 11‑35‑4425 SO AS TO PROVIDE THAT IF A FINAL ORDER IS NOT APPEALED THE CHIEF PROCUREMENT OFFICER MAY FILE A CERTIFIED COPY OF THE FINAL RULING; BY ADDING SECTION 11‑35‑4430 SO AS TO PROVIDE THAT PANEL MEMBERS MAY NOT COMMUNICATE IN CONNECTION WITH ANY ISSUE OF FACT OR ISSUE OF LAW; TO AMEND SECTION 11‑35‑4610, RELATING TO DEFINITIONS, SO AS TO EXPAND ON THE DEFINITION OF “PUBLIC PROCUREMENT UNIT”; TO AMEND SECTION 11‑35‑4810, RELATING TO COOPERATIVE PURCHASING AUTHORIZED, SO AS TO PROVIDE THAT CERTAIN COOPERATIVE PURCHASING WITH OTHER STATES MUST BE THROUGH CONTRACTS AWARDED THROUGH FULL AND OPEN COMPETITION; TO AMEND SECTION 11‑35‑4830, RELATING TO THE SALE, ACQUISITION, OR USE OF SUPPLIES BY A PUBLIC PROCUREMENT UNIT, SO AS TO PROVIDE THAT A PUBLIC PROCUREMENT UNIT MAY SELL TO, ACQUIRE FROM, OR USE ANY SUPPLIES BELONGING TO ANOTHER PUBLIC PROCUREMENT UNIT INDEPENDENT OF CERTAIN REQUIREMENTS; TO AMEND SECTION 11‑35‑4840, RELATING TO THE COOPERATIVE USE OF SUPPLIES OR SERVICES, SO AS TO PROVIDE THAT ANY PUBLIC PROCUREMENT UNIT MAY ENTER INTO AN AGREEMENT INDEPENDENT OF CERTAIN REQUIREMENTS; TO AMEND SECTION 11‑35‑4860, RELATING TO THE SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL SERVICES, SO AS TO PROVIDE THAT THE PROCEEDS FROM CERTAIN SALES MUST BE PLACED IN A REVENUE ACCOUNT; TO AMEND SECTION 11‑35‑4870, RELATING TO THE USE OF PAYMENTS RECEIVED BY A SUPPLYING PUBLIC PROCUREMENT UNIT, SO AS TO PROVIDE THAT CERTAIN PAYMENTS MUST BE DEPOSITED IN A SPECIAL REVENUE ACCOUNT; TO AMEND SECTION 11‑35‑4880, RELATING TO PUBLIC PROCUREMENT UNITS IN COMPLIANCE WITH CODE REQUIREMENTS, SO AS TO REMOVE A REFERENCE TO EXTERNAL PROCUREMENT ACTIVITY; BY ADDING SECTION 11‑35‑4900 SO AS TO PROVIDE FOR APPROVAL OF CERTAIN INTERGOVERNMENTAL ACQUISITIONS; TO AMEND SECTION 1‑23‑600, AS AMENDED, RELATING TO THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT HEARINGS AND PROCEEDINGS, SO AS TO PROVIDE THAT AN APPEAL FROM THE PROCUREMENT REVIEW PANEL IS TO THE COURT OF APPEALS; TO AMEND SECTION 57‑1‑490, RELATING TO THE DEPARTMENT OF TRANSPORTATION’S ANNUAL AUDITS, SO AS TO REMOVE THE REQUIREMENT THAT THE DEPARTMENT’S INTERNAL PROCUREMENT OPERATION MUST BE AUDITED ANNUALLY; BY ADDING SECTION 1‑11‑190 SO AS TO PROVIDE RESPONSIBILITIES FOR THE DEPARTMENT OF ADMINISTRATION; TO PROVIDE THAT THE STATE FISCAL ACCOUNTABILITY AUTHORITY SHALL PUBLISH INTERIM REGULATIONS IT WILL FOLLOW TO IMPLEMENT CERTAIN CHANGES; TO REPEAL SECTION 11‑35‑1580 RELATING TO INFORMATION TECHNOLOGY PROCUREMENTS; TO REDESIGNATE ARTICLE 10, CHAPTER 35, TITLE 11 AS “INDEFINITE QUANTITY CONTRACTS”; AND TO RECODIFY SECTIONS 11‑35‑35, RELATING TO SURETY BONDS, 11‑35‑55, RELATING TO THE PURCHASE OF GOODS OR SERVICES FROM AN ENTITY EMPLOYING PRISON INMATES, AND 11‑35‑70, RELATING TO SCHOOL DISTRICTS SUBJECT TO THE PROCUREMENT CODE.**

Whereas, the General Assembly finds that it adopted a modified version of the 1979 ABA Model Procurement Code for State and Local Governments, when it enacted 1981 Act No. 148. Since then, the ABA has revised its recommended model by adopting the 2000 ABA Model Procurement Code for State and Local Governments, a primary goal of which was to encourage the competitive use of new forms of project delivery in public construction procurement. With the enactment of Act 174 in 2008, the General Assembly adopted a modified version of the changes made by the 2000 ABA Model Code. In recognition of the state’s long history of reliance on the model code, the applicable official comments to the model code, and the relevant and applicable construction given to the model code, should be examined as persuasive authority for interpreting and construing the South Carolina Consolidated Procurement Code; and

Whereas, it is the intent of the General Assembly that agencies and institutions comply with Section 11‑35‑1530, which limits use of this source selection method to circumstances in which the use of competitive sealed bidding is either not practicable or not advantageous to the State; accordingly, the basis for such determinations must be specified with particularity and must be documented in sufficient detail to satisfy the requirements of audit. The Materials Management Officer is responsible for controlling the use of RFPs by the respective offices of the Division of Procurement Services and for monitoring the adequacy of such determinations statewide; and

Whereas, the General Assembly finds that thorough and considered acquisition planning, including appropriate market research, industry‑government communications, requirements definitions, risk analysis, and contract administration plans, is necessary to provide increased economy in state procurement activities, to maximize to the fullest extent practicable the purchasing values of funds, and to foster effective broad‑based competition for public procurement, all of which are key purposes of the procurement laws; accordingly, the head of each using agency, as defined in Section 11‑35‑310, is expected to have in place an effective system to implement such planning, and the State Fiscal Accountability Authority is expected to promulgate regulations, establishing guidelines for and requiring such planning, and to audit for compliance with such regulations; and

Whereas, the General Assembly finds that acquisition policies that more closely resemble those of the commercial marketplace, encourage the acquisition of commercial items, and, where possible, allow use of terms and conditions accepted in the marketplace, will promote efficiency and economy in contracting and avoid unnecessary burdens for agencies and contractors. Accordingly, it adopts simplified procedures for the acquisition of commercially available off‑the‑shelf products, including higher dollar thresholds for agency purchases of those products. Now, therefore,

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

**Construction and application of code**

SECTION 1. Section 11‑35‑20 of the 1976 Code is amended to read:

“Section 11‑35‑20. (1) This code must be construed and applied to promote underlying purposes and policies.

(2) The underlying purposes and policies of this code are:

(a) to provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the State and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;

(b) to foster effective broad‑based competition for public procurement within the free enterprise system;

(c) to develop procurement capability responsive to appropriate user needs;

(d) to consolidate, clarify, and modernize the law governing procurement in this State and permit the continued development of explicit and thoroughly considered procurement policies and practices;

(e) to require the adoption of competitive procurement laws and practices by units of state and local governments;

(f) to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement;

(g) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process; and

(h) to develop an efficient and effective means of delegating roles and responsibilities to the various government procurement officers.”

**No implied repeal**

SECTION 2. Article 1, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑27. No part of this chapter may be considered to be impliedly repealed by subsequent legislative enactment if such construction of the subsequent legislative enactment can be reasonably avoided.”

**Application of the Procurement Code**

SECTION 3. Section 11‑35‑40(2) and (3) of the 1976 Code is amended to read:

“(2) Application to State Procurement. This code applies to every procurement or expenditure of funds by this State under contract acting through a governmental body as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in Section 11‑35‑40(3) (Compliance with Federal Requirements) and except that this code does not apply to gifts, to the issuance of grants, or to contracts between public procurement units, except as provided in Article 19 (Intergovernmental Relations). Notwithstanding the foregoing, the provisions of Article 23 (Statewide Provisions) apply as provided therein. It also shall apply to the disposal of state supplies as provided in Article 15 (Supply Management). No state agency or subdivision thereof may sell, lease, or otherwise alienate or obligate telecommunications and information technology infrastructure of the State by temporary proviso and unless provided for in the general laws of the State.

(3) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance, grant, or contract funds, the governmental body also shall comply with federal laws (including authorized regulations) as are mandatorily applicable and which are not presently reflected in this code; however, failure to comply with the foregoing is not subject to review under Article 17. Notwithstanding, where federal assistance, grant, or contract funds are used in a procurement by a governmental body as defined in Section 11‑35‑310(18), this code, including any requirements that are more restrictive than federal requirements, must be followed, except to the extent such action would render the governmental body ineligible to receive federal funds whose receipt is conditioned on compliance with mandatorily applicable federal law. In those circumstances, the solicitation must identify and explain the impact of such federal laws on the procurement process, including any required deviation from this code.”

**Conforming change**

SECTION 4. Section 11‑35‑70 of the 1976 Code is amended to read:

“Section 11‑35‑70. Irrespective of the source of funds, any school district whose budget of total expenditures, including debt service, exceeds seventy‑five million dollars annually is subject to the provisions of Chapter 35, Title 11, and shall notify the Director of the Division of Procurement Services of the State Fiscal Accountability Authority of its expenditures within ninety days after the close of its fiscal year. However, if a district has its own procurement code which is, in the written opinion of the Division of Procurement Services of the State Fiscal Accountability Authority, substantially similar to the provisions of the South Carolina Consolidated Procurement Code, the district is exempt from the provisions of the South Carolina Consolidated Procurement Code except for a procurement audit which must be performed every three years by an audit firm approved by the Division of Procurement Services. Costs associated with the internal review and audits are the responsibility of the school district and will be paid to the entity performing the audit.”

**Determinations exemption**

SECTION 5. Section 11‑35‑210 of the 1976 Code is amended to read:

“Section 11‑35‑210. (A) Written determinations expressly required by the code or regulations must be retained in an official contract file of the governmental body administering the contract. These determinations must be documented in sufficient detail to satisfy the requirements of audit as provided in Section 11‑35‑1230.

(B) All findings, determinations, decisions, policies, and procedures allowed by this chapter are exempt from the requirements of Section 1‑23‑140(b).”

**Definitions**

SECTION 6. Section 11‑35‑310 of the 1976 Code is amended to read:

“Section 11‑35‑310. Unless the context clearly indicates otherwise:

(1) ‘Information Technology (IT)’ means information resources, telecommunications, and information services:

(a) ‘Information resources’ means any equipment including interconnected systems or subsystems of equipment that is used in the automatic acquisition, creation, conversion, duplication, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the using agency.

(i) ‘Information resources’ includes, but is not limited to, computers, ancillary equipment, including imaging peripherals, input, output, and storage devices and devices necessary for security and surveillance, peripheral equipment designed to be controlled by the central processing unit of a computer, databases, software, firmware, middleware, and application and application development software; whether owned, leased, licensed, or accessed as a service; and routine maintenance and support.

(ii) ‘Database’ means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer.

(iii) ‘Software’ means computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations.

(iv) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires its use.

(b) ‘Telecommunications’ means voice, data, message, and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.

(c) ‘Information Services’ means services provided by a contractor associated with any aspect of information resources or telecommunications, except that information services does not include information resources or telecommunications.

(2) ‘Board’ means governing body of the State Fiscal Accountability Authority.

(3) ‘Business’ means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

(4) ‘Business day’ means a day that is neither a Saturday, Sunday, nor a state or federal holiday.

(5) ‘Change order’ means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

(6) ‘Chief procurement officer’ means (a) the management officer for information technology, (b) the state engineer for areas of construction, architectural and engineering, construction management, and land surveying services, and (c) the materials management officer for all other procurements.

(7) ‘Construction’ means the process of building, altering, repairing, remodeling, improving, or demolishing a public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility, including structures, buildings, or real property.

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

(9) ‘Contract modification’ means a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

(10) ‘Contractor’ means any person having a contract with a governmental body.

(11) ‘Cost effectiveness’ means the ability of a particular product or service to efficiently provide goods or services to the State. In determining the cost effectiveness of a particular product or service, the procurement officer shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.

(12) ‘Data’ means recorded information, regardless of form or characteristics.

(13) ‘Days’ means calendar days. In computing any period of time prescribed or allowed by this code or the ensuing regulations, or by any order of the Procurement Review Panel, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period computed is to be included, unless it is a Saturday, Sunday, or a state or federal holiday, in which event the period runs to the end of the next day which is neither a Saturday, Sunday, nor such holiday.

(14) ‘Debarment’ means the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the State, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.

(15) ‘Designee’ means a duly authorized representative of a person with formal responsibilities under the code.

(16) ‘Employee’ means an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body.

(17) (Reserved)

(18) ‘Governmental body’ means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Legislative Services Agency, and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts or any entity created by act of the General Assembly for the purpose of erecting monuments or memorials or commissioning art that is being procured exclusively by private funds.

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

(20) ‘Information Technology Management Officer’ means the person holding the position as the head of the State Information Technology Office.

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

(22) ‘Materials Management Officer’ means the person holding the position as the head of the materials management office of the State.

(23) ‘Person’ means any business, individual, union, committee, club, other organization, or group of individuals.

(24) ‘Political subdivision’ means all counties, municipalities, school districts, public service or special purpose districts.

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

(26) ‘Procurement officer’ means any person duly authorized by the appropriate chief procurement officer or the head of the purchasing agency to enter into and administer contracts and make written determinations and findings with respect thereto. The term also includes an authorized representative of the governmental body within the scope of his authority.

(27) ‘Public funds’ means any money or property owned by the State or a political subdivision thereof, regardless of form and whether in specie or otherwise.

(28) ‘Purchasing agency’ means any governmental body other than the chief procurement officers authorized by this code or by way of delegation from the chief procurement officers to enter into contracts.

(29) ‘Real property’ means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

(30) ‘Request for proposals’ (RFP) means a written or published solicitation issued by an authorized procurement officer for proposals to provide supplies, services, information technology, or construction which ordinarily result in the award of the contract to the responsible offeror making the proposal determined to be most advantageous to the State.

(31) ‘Services’ means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements or information services as defined in Section 11‑35‑310(1)(c).

(32) ‘Subcontractor’ means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor’s agreement with a governmental body.

(33) ‘Supplies’ means all personal property including, but not limited to, equipment, materials, printing, and insurance.

(34) ‘State’ means state government.

(35) ‘State Engineer’ means the person holding the position as head of the state engineer’s office.

(36) ‘Suspension’ means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the State, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.

(37) ‘Term contract’ means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term. As provided in the solicitation, if a governmental body is offered the same supplies, services, or information technology at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multiterm contract as provided in Section 11‑35‑2030.

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

**Public access to procurement information exception**

SECTION 7. Section 11‑35‑410 of the 1976 Code is amended to read:

“Section 11‑35‑410. (A) Procurement information must be a public record to the extent required by Chapter 4, Title 30 (The Freedom of Information Act), except as otherwise provided by this code, and with the exception that commercial or financial information obtained in response to a request for proposals or any type of bid solicitation that is privileged and confidential need not be disclosed.

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

(1) customer lists;

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

(3) design concepts, including methods and procedures;

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

(C) The board shall promulgate regulations directing the public availability and disposition of documents submitted in response or with regard to a solicitation or other request where no award is made.

(D) For all documents submitted in response or with regard to any solicitation or other request, the person submitting the documents shall comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public.

(E) A governmental body, with the approval of the appropriate chief procurement officer, may keep portions of a solicitation confidential and release the information to prospective offerors only upon execution of a nondisclosure agreement, provided the information is otherwise exempted from disclosure by law.

(F) If requested in writing before a final award by an actual bidder, offeror, contractor, or subcontractor with regard to a specific intended award or award of a contract, the procurement officer shall, within five days of the receipt of any such request, make documents directly connected to the procurement activity and not otherwise exempt from disclosure available for inspection at an office of the responsible procurement officer. Without otherwise limiting any other exemptions granted by law, and except as provided herein, documents of and documents incidental to proposed contractual arrangements, including those used for contract negotiations, are not exempt from disclosure after the date notice of intent to award is posted, unless the notice is subsequently canceled.”

**Conforming change**

SECTION 8. Section 11‑35‑510 of the 1976 Code is amended to read:

“Section 11‑35‑510. All rights, powers, duties, and authority relating to the procurement of supplies, services, and information technology and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services now vested in or exercised by a state governmental body pursuant to the provisions of law relating thereto, and regardless of source of funding, are hereby vested in the appropriate chief procurement officer, or with regard to Article 15, as provided therein. This vesting of authority is subject to Section 11‑35‑710 (Exemptions), Section 11‑35‑1250 (Authority to Contract for Auditing Services), Section 11‑35‑1260 (Authority to Contract for Legal Services), Section 11‑35‑1550 (Small Purchases), Section 11‑35‑1560 (Sole Source Procurement), Section 11‑35‑1570 (Emergency Procurements), Section 11‑35‑3230 (Exception for Small Architect‑Engineer, and Land Surveying Services Contracts), and Section 11‑35‑3620 (Management of Warehouses and Inventory).”

**Advisory committees**

SECTION 9. Section 11‑35‑530 of the 1976 Code is amended to read:

“Section 11‑35‑530. The following advisory committees may be established by the board for the purpose of advising the board:

(a) The board may appoint a purchasing policies and procedures advisory committee comprised of state and local government, and public members to discuss the performance of public purchasing in the State and to consider specific methods for improvement.

(b) The board may appoint an information technology and procedures advisory committee comprised of state and local government and public members to discuss the purchasing performance of information technology for government in the State and to consider specific methods for improvement.

(c) The board may appoint a construction, architect‑engineer, construction management, and land surveying services advisory committee comprised of state and local government and public members to discuss the purchasing performance of these services in the State and to consider specific methods of improvement. The advisory committee shall be comprised of the following: the State Engineer, a state agency representative, a banker, an attorney, a representative of local government, a registered architect, a registered engineer, a licensed building contractor, and a licensed subcontractor.”

**Deletion of duty of the chief executive officer**

SECTION 10. Section 11‑35‑540(5) of the 1976 Code is deleted.

**Eleemosynary exemption**

SECTION 11. Section 11‑35‑710 of the 1976 Code is amended to read:

“Section 11‑35‑710. (A) The board, upon the recommendation of the chief procurement officer, may exempt governmental bodies from purchasing certain items through the respective chief procurement officer’s area of responsibility. The board may exempt specific supplies, services, information technology, or construction from the purchasing procedures required in this chapter and for just cause by unanimous written decision limit or may withdraw exemptions provided for in this section. The following exemptions are granted from this chapter:

(1) the construction, maintenance, and repair of bridges, highways, and roads; vehicle and road equipment maintenance and repair; and other emergency‑type parts or equipment utilized by the Department of Transportation or the Department of Public Safety;

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

(3) South Carolina State Ports Authority;

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

(5) South Carolina Public Service Authority;

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

(7) livestock, feed, and veterinary supplies;

(8) articles for commercial sale by all governmental bodies;

(9) fresh fruits, vegetables, meats, fish, milk, and eggs;

(10) South Carolina Arts Commission and South Carolina Museum Commission for the purchase of one‑of‑a‑kind items such as paintings, antiques, sculpture, and similar objects. Before a governmental body procures the objects, the head of the purchasing agency shall prepare a written determination specifying the need for the objects and the benefits to the State. The South Carolina Arts Commission shall review the determination and forward a recommendation to the board for approval;

(11) published books, periodicals, and technical pamphlets;

(12) South Carolina Research Authority;

(13) the purchase of supplies, services, or information technology by state offices, departments, institutions, agencies, boards, and commissions or the political subdivisions of this State from the South Carolina Department of Corrections, Division of Prison Industries;

(14) Medical University Hospital Authority, if the Medical University Hospital Authority has promulgated a procurement process in accordance with its enabling provision;

(15) if approved in writing by the State Engineer in advance, and if some aspect of the overall transaction is otherwise approved by the board in advance of the acquisition, an acquisition of construction from an eleemosynary corporation or foundation, or a wholly owned business thereof, established solely for the governmental body’s benefit, but only if the eleemosynary corporation or foundation acquires the construction on behalf of or for the use of the governmental body and does so pursuant to this code, as required by Section 11‑35‑40(4).

(B) The State Fiscal Accountability Authority shall maintain and post publicly a running list of all currently effective actions taken by the board pursuant to subsection (A).”

**Conforming change**

SECTION 12. Section 11‑35‑810 of the 1976 Code is amended to read:

“Section 11‑35‑810. There is hereby created, within the Division of Procurement Services, a Materials Management Office to be headed by the Materials Management Officer.”

**Responsibilities of the Information Technology Management Office**

SECTION 13. Section 11‑35‑820 of the 1976 Code is amended to read:

“Section 11‑35‑820. There is created within the Division of Procurement Services, the Information Technology Management Office to be headed by the Information Technology Management Officer. The office is responsible for administering all procurement and contracting activities undertaken for governmental bodies involving information technology in accordance with this chapter, and may establish a training and certification program in accordance with Section 11‑35‑1030. All procurements involving information technology, and any pre‑procurement and post‑procurement activities in this area, must be conducted in accordance with the regulations promulgated by the board.”

**Direct procurements not under term contracts**

SECTION 14. Section 11‑35‑1210(1), (2), and (4) is amended to read:

“(1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Division of Procurement Services shall review the respective governmental body’s internal procurement operation, shall certify in writing that it is consistent with the provisions of this code and the ensuing regulations, and recommend to the board those dollar limits for the respective governmental body’s procurement not under term contract; and

(b) the Director of the Division of Procurement Services may authorize an individual governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. All authority granted pursuant to this item must be in writing, and the director shall advise the board in writing of all such authorizations.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs;

(c) obtaining the best prices for value received.

(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate chief procurement officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the Division of Procurement Services makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the Division of Procurement Services.”

**Deletion of responsibility of the Division of Budget Analysis in auditing and fiscal reporting**

SECTION 15. Section 11‑35‑1230 of the 1976 Code is amended to read:

“Section 11‑35‑1230. (1) The Division of Procurement Services, through consultation with the chief procurement officers, shall develop written plans for the auditing of state procurements.

(2) In procurement audits of governmental bodies thereafter, the auditors from the Division of Procurement Services shall review the adequacy of the governmental body’s internal controls in order to ensure compliance with the requirement of this code and the ensuing regulations. A noncompliance discovered through audit must be transmitted in management letters to the audited governmental body and the board. The Division of Procurement Services shall provide in writing proposed corrective action to governmental bodies. Based upon audit recommendations, the board may revoke certification as provided in Section 11‑35‑1210 and require the governmental body to make all procurements through the appropriate chief procurement officer above a dollar limit set by the board, until such time as the board is assured of compliance with this code and its regulations by that governmental body.”

**Definitions**

SECTION 16. Section 11‑35‑1410 of the 1976 Code is amended to read:

“Section 11‑35‑1410. Unless the context clearly indicates otherwise:

(1) ‘Commercial product’ means supplies, other than printing, or information resources:

(a) that is of a type customarily used by the general public and that has been sold, leased, or licensed to the general public;

(b) that would satisfy the criteria in subitem (a) were it not for modifications of a type customarily available in the commercial marketplace, or minor modifications made to meet state requirements; or

(c) that is a combination of products meeting the requirements of subitem (a) or (b) that are of a type customarily combined and sold in combination to the general public.

(2) ‘Commercially available off‑the‑shelf product’ means supplies, other than printing, or information resources: that is a commercial product, as defined herein, that is sold in substantial quantities in the commercial marketplace; and is offered to the State, without modification, in the same form in which it is sold in the commercial marketplace. It does not include agricultural products, petroleum products, and other items customarily sold in bulk.

(3) ‘Cost‑reimbursement contract’ means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this code, and paid a fee, if any.

(4) ‘Established catalog price’ means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or vendor of an item;

(b) is either published or otherwise available for inspection by customers;

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

(5) ‘Invitation for bids’ means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section 11‑35‑1520.

(6) ‘Purchase description’ means specifications or other document describing the supplies, services, information technology, or construction to be procured.

(7) ‘Request for proposals’ means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(8) ‘Responsible bidder or offeror’ means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

(9) ‘Responsive bidder or offeror’ means a person who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids or request for proposals.”

**Addition of competitive negotiations to methods of source selection**

SECTION 17. Section 11‑35‑1510 of the 1976 Code is amended to read:

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

(1) Section 11‑35‑1250 (Authority to Contract for Auditing Services);

(2) Section 11‑35‑1260 (Authority to Contract for Legal Services);

(3) Section 11‑35‑1525 (Fixed Priced Bidding);

(4) Section 11‑35‑1528 (Competitive Best Value Bidding);

(5) Section 11‑35‑1529 (Competitive Online Bidding);

(6) Section 11‑35‑1530 (Competitive Sealed Proposals);

(7) Section 11‑35‑1535 (Competitive Negotiations);

(8) Section 11‑35‑1540 (Negotiations After Unsuccessful Competitive Sealed Bidding);

(9) Section 11‑35‑1550 (Small Purchases);

(10) Section 11‑35‑1560 (Sole Source Procurements);

(11) Section 11‑35‑1570 (Emergency Procurements);

(12) Section 11‑35‑1575 (Participation in Auction or Bankruptcy Sale);

(13) (Reserved)

(14) Section 11‑35‑3015 (Source Selection Methods Assigned to Project Delivery Methods);

(15) Section 11‑35‑3220 (Architect Engineer, Construction Management and Land Surveying Services Procurement Procedures); and

(16) Section 11‑35‑3230 (Exception for Small Architect‑Engineer and Land Surveying Services contracts).”

**Competitive sealed bidding**

SECTION 18. Section 11‑35‑1520(1), (3), (7), (8), and (10) of the 1976 Code is amended to read:

“(1) Condition for Use. Contracts must be awarded by competitive sealed bidding except as otherwise provided in Section 11‑35‑1510.

(3) Notice. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. The notice must include publications in ‘South Carolina Business Opportunities’. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.

(7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation and re‑award of awards or contracts, after award but before performance, may be permitted in accordance with regulations promulgated by the board. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated pursuant to it. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but before performance, must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency.

(8) Reserved.

(10) Award. Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice on the date and at a location specified in the invitation for bids. For contracts with a total or potential value in excess of one hundred thousand dollars, notice of an intended award of a contract must be given by posting the notice for seven business days before entering into a contract and must be sent electronically to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section. The posting date shall appear on the face of all these notices. If a change to the posting date is necessary, notice of the revised posting date must be given by posting the notice for three business days at the location identified in the solicitation and must be sent electronically to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section. The invitation for bids and a notice of award or notice of intent to award must contain a statement of a bidder’s right to protest pursuant to Section 11‑35‑4210(1). When only one response is received, the notice of intent to award and the delay of award may be waived.”

**Competitive fixed price bidding**

SECTION 19.A. Section 11‑35‑1525(1), (6), (8), and (9) of the 1976 Code is amended to read:

“(1) Conditions for Use. When the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a contract may be entered into by competitive fixed price bidding subject to the provisions of Section 11‑35‑1520 and the ensuing regulations, unless otherwise provided for in this section.

(6) Reserved.

(8) Bids Received After Award. As provided in the solicitation, bidders not responding to the initial fixed price bid may be added to the awarded vendors’ list provided the bidder furnishes evidence of responsibility and responsiveness to the state’s original fixed price bid as required by the solicitation.”

B. The deletion of Section 11‑35‑1525(9) may not be interpreted as an indication that the failure of a specific offeror to receive business is grounds for a dispute.

**Competitive best value bidding**

SECTION 20. Section 11‑35‑1528 (1), (4), (5), (6), and (7) of the 1976 Code is amended to read:

“(1) Conditions for Use. When the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a contract may be entered into by competitive best value bidding subject to the provisions of Section 11‑35‑1520 and the ensuing regulations, unless otherwise provided for in this section.

(4) Bid Opening. At bid opening, the only information that will be released is the names of the participating bidders. Price information will be provided after the ranking of bidders and the issuance of award.

(5) Evaluation Factors. The best value bid must state the factors to be used in determination of award and the numerical weighting for each factor. Price must be a factor in determination of award and cannot be weighted at less than sixty percent. Best value bid evaluation factors may include, but are not limited to, any of the following:

(a) operational costs the State would incur if the bid is accepted;

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

(c) reliability of delivery and implementation schedules;

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

(e) warranties, guarantees, and return policy;

(f) vendor financial stability;

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

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

(i) industry and program experience;

(j) prior record of vendor performance;

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

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

(m) proven development methodologies and tools; and

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

(6) Clarification of Responsive Bid. The procurement officer may ask a responsive bidder to clarify an ambiguity in its bid; however, no material modification of the bid is allowed.

(7) Selection and Ranking. Bids shall be evaluated by using only the criteria and weightings stated in the invitation for best value bids. All evaluation factors, other than price, will be considered independent of and prior to determining the effect of price on the score for each participating bidder. Once the evaluation is complete, all responsive bidders must be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the invitation for best value bids.”

**Competitive online bidding**

SECTION 21. Section 11‑35‑1529 of the 1976 Code is amended to read:

“Section 11‑35‑1529. (1) Conditions for Use. When the procurement officer determines in writing that on‑line bidding is more advantageous than competitive sealed bidding, a contract may be entered into by competitive on‑line bidding, subject to the provisions of Section 11‑35‑1520 and the ensuing regulations, unless otherwise provided in this section.

(2) Public Notice. Adequate public notice of the request for the solicitation must be given in the same manner as provided in Section 11‑35‑1520(3).

(3) Bidding Process. The solicitation must designate both an Opening Date and Time and a Closing Date and Time. The Closing Date and Time need not be a fixed point in time, but may remain dependent on a variable specified in the solicitation. At the Opening Date and Time, the State must begin accepting real‑time electronic bids. The solicitation must remain open until the Closing Date and Time. Before the Opening Date and Time, the State shall require bidders to register, shall register only responsible bidders, and, as a part of that registration, require bidders to agree to any terms, conditions, or other requirements of the solicitation. If less than two bidders are registered, the solicitation must be canceled. Following receipt of the first bid after the Opening Date and Time, the lowest bid price must be posted electronically to the Internet and updated on a real‑time basis. At any time before the Closing Date and Time, a bidder may lower the price of its bid, except that after Opening Date and Time, a bidder may not lower its price unless that price is below the then lowest bid. Bid prices may not be increased after Opening Date and Time. Except for bid prices, bids may be modified only as otherwise allowed by this code. A bid may be withdrawn only in compliance with Section 11‑35‑1520. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the Closing Date and Time, the State may cancel the solicitation in accordance with this code or reopen electronic bidding to all pre‑existing bidders by giving adequate notice to all pre‑existing bidders of both the new Opening Date and Time and the new Closing Date and Time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.

(4) Receipt and Safeguarding of Bids. Other than price, any information provided to the State by a bidder must be safeguarded as required by Section 11‑35‑1520(4).

(5) Provisions Not to Apply. Section 11‑35‑1524 and paragraph (5) (Bid Opening) of Section 11‑35‑1520 do not apply to solicitations issued pursuant to this section.”

**Competitive sealed proposals**

SECTION 22. Section 11‑35‑1530 of the 1976 Code is amended to read:

“Section 11‑35‑1530. (1) Conditions for Use.

(a) If the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a contract may be entered into by competitive sealed proposals subject to the provisions of Section 11‑35‑1520 and the ensuing regulations, unless otherwise provided in this section.

(b) The board may provide by regulation that it is either not practicable or not advantageous to the State to procure specified types of supplies, services, information technology, or construction by competitive sealed bidding.

(2) Public Notice. Adequate public notice of the request for proposals must be given in the same manner as provided in Section 11‑35‑1520(3).

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

(4) Request for Qualifications.

(a) Before soliciting proposals, the procurement officer may issue a request for qualifications from prospective offerors. The request must contain at a minimum a description of the scope of the work to be solicited by the request for proposals and must state the deadline for submission of information and how prospective offerors may apply for consideration. The request must require information only on their qualifications, experience, and ability to perform the requirements of the contract.

(b) After receipt of the responses to the request for qualifications from prospective offerors, rank of the prospective offerors must be determined in writing from most qualified to least qualified on the basis of the information provided. Proposals then must be solicited from at least the top two prospective offerors by means of a request for proposals. The determination regarding how many proposals to solicit is not subject to review pursuant to Article 17.

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

(6) Discussion with Offerors. As provided in the request for proposals, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussions. In conducting discussions, there must be no disclosure of confidential information derived from proposals submitted by competing offerors. The board shall promulgate regulations governing discussions.

(7) Selection and Ranking. Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals.

(8) Negotiations. After proposals have been ranked pursuant to Section 11‑35‑1530(7), the procurement officer, in his sole discretion and not subject to review under Article 17, may proceed in any of the manners indicated below, except that in no case may confidential information derived from proposals and negotiations submitted by competing offerors be disclosed:

(a) negotiate with the highest ranking offeror on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the procurement officer, with the second, and then the third, and so on, ranked offerors to the level of ranking determined by the procurement officer in his sole discretion;

(b) during the negotiation process as outlined in item (a) above, if the procurement officer is unsuccessful in his first round of negotiations, he may reopen negotiations with any offeror with whom he previously negotiated; or

(c) before or after negotiations pursuant to Section 11‑35‑1530(8), the procurement officer may make changes to the request for proposals within the general scope of the request for proposals and may provide all responsive offerors an opportunity to submit their best and final offers, which must be reevaluated and ranked pursuant to Section 11‑35‑1530(7).

(9) Award. Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration the evaluation factors set forth in the request for proposals, unless the procurement officer determines to utilize one of the options provided in Section 11‑35‑1530(8). The award of the contract must be made on the basis of evaluation factors that must be stated in the RFP. The contract file must contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contract must be the same as those provided in Section 11‑35‑1520(10).”

**Competitive negotiations**

SECTION 23. Subarticle 3, Article 5, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑1535. (A) Conditions for Use.

(1) Competitive negotiations are most appropriate for complex, major acquisitions.

(2) If the procurement officer determines in writing that the use of competitive negotiations is appropriate and in the using agency’s interest, a contract may be entered into by competitive negotiations subject to the provisions of Section 11‑35‑1520 and the ensuing regulations, unless otherwise provided in this section. This section may not be used to acquire only commercially available off‑the‑shelf products.

(3) Competitive negotiated acquisitions may be conducted only by the office of the appropriate chief procurement officer.

(B) Definitions. As used in this section:

(1) ‘Clarification’ means any communication in which the procurement officer requests or accepts information that clarifies any information in a proposal. Clarification does not include the request or acceptance of any change to the terms of a contractual offer.

(2) ‘Competitive range’ means the offeror or group of offerors selected for negotiation.

(3) ‘Negotiations’ means any communication that invites or permits an offeror to change the terms of its contractual offer in any way.

(C) Request for qualifications. Offerors may be prequalified as provided in Section 11‑35‑1530(4).

(D) Requests for proposals.

(1)(a) Solicitations for competitive negotiations must be requests for proposals and must, at a minimum, describe:

(i) the state’s requirements;

(ii) anticipated terms and conditions that will apply to the contract. The solicitation may authorize offerors to propose alternative terms and conditions, including alternative contract line items;

(iii) information required to be in the offerors proposal; and

(iv) evaluation factors.

(b) The request for proposals must state the relative importance of all factors to be considered in evaluating proposals but need not state a numerical weighting for each factor. Except as provided by regulation, past performance and price must be evaluated. If price is an evaluation factor, the solicitation must state whether all evaluation factors other than price, when combined, are significantly more important than, approximately equal to, or significantly less important than price.

(2) Amendments. Amendments issued after the established time and date for receipt of proposals may not exceed the general scope of the request for proposals and must be issued to those offerors that have not been eliminated from the competition.

(E) Public Notice. Adequate public notice of the request for proposals must be given in the same manner as provided in Section 11‑35‑1520(3).

(F) Receipt of Proposals. Proposals must be opened in accordance with regulations of the board. A tabulation of proposals must be prepared in accordance with regulations promulgated by the board and must be open for public inspection after contract award.

(G) Evaluation. Proposal evaluation is an assessment of the proposal and the offeror’s ability to perform the prospective contract successfully. All proposals must be evaluated and, after evaluation, their relative qualities must be assessed solely on the factors and subfactors specified in the solicitation. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation must be documented in the contract file.

(H) Competitive Range. After complying with subsection (G), the procurement officer shall establish a competitive range comprised of the offerors that submitted the most promising offers. Ordinarily, the competitive range should not include more than three offerors. The procurement officer may select only one offeror and may select more than three. The procurement officer shall document the rationale for the selections.

(I) Exchanges with Offerors.

(1) Fairness and impartiality. The procurement officer shall treat all offerors fairly and impartially when deciding whether and when to seek clarification or to negotiate. Similarly situated offerors must be given similar opportunities to clarify and, if in the competitive range, to negotiate.

(2) Clarifications. The procurement officer may conduct clarifications at any time before the award decision.

(3) Negotiations.

(a) The procurement officer shall negotiate with each offeror in the competitive range. The primary objective is to maximize the state’s ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. Subject to item (1), the scope and extent of negotiations are a matter of the procurement officer’s judgement.

(b)(i) At a minimum, the procurement officer shall identify and seek the elimination of any term of a contractual offer that does not conform to a material requirement of a solicitation and any other undesirable terms in a contractual offer.

(ii) The procurement officer may negotiate with offerors to seek changes in their contractual offers that the State desires and to allow them to make other improvements.

(iii) Negotiations may include pricing.

(iv) The procurement officer may not relax or change any material term of the solicitation during negotiation except by amendment.

(v) In conducting negotiations, the procurement officer may not disclose confidential information derived from proposals submitted by competing offerors.

(c) The procurement officer shall document the using agency’s prenegotiation objectives with regard to each offeror in the competitive range and shall prepare a record of each negotiation session.

(d) The procurement officer may eliminate an offeror from the competitive range after negotiation if the offeror is no longer considered to be among the most promising.

(4) The board must promulgate regulations governing exchanges with offerors.

(J) Proposal Revisions. The procurement officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. If an offeror’s proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror’s proposal may be accepted or considered. Upon the completion of negotiations, the contracting officer shall request that offerors still in the competitive range submit final proposals no later than a specified common cutoff date and time.

(K) Award.

(1) Award must be based on a comparative assessment of final proposals from offerors within the competitive range against all source selection criteria in the solicitation. Award must be made to the responsible offeror whose final proposal meets the announced requirements in all material respects and is determined in writing to provide the best value to the State, taking into consideration the evaluation factors set forth in the request for proposals and, if price is an evaluation factor, any tradeoffs among price and non‑price factors. As provided by regulation, the contract file must document the basis on which the award is made, and the documentation must explain and justify the rationale for any business judgments and tradeoffs made or relied on in the award determination, including benefits associated with additional costs. Section 11‑35‑1524 does not apply.

(2) Procedures and requirements for the notification of intent to award the contract must be the same as those provided in Section 11‑35‑1520(1).”

**Conforming change**

SECTION 24. Section 11‑35‑1540 of the 1976 Code is amended to read:

“Section 11‑35‑1540. When bids received pursuant to an invitation for bids under Section 11‑35‑1520 are considered unreasonable by the procurement officer, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the chief procurement officer, the head of a purchasing agency, or the designee of either officer above the level of procurement officer, that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

(1) each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;

(2) the negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation;

(3) the negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.”

**Small purchase procedures**

SECTION 25. Section 11‑35‑1550 of the 1976 Code is amended to read:

“Section 11‑35‑1550. (1) Authority. The following small purchase procedures may be utilized only in conducting procurements for governmental bodies that are up to the amounts specified herein, but not in excess of the authority granted pursuant to Section 11‑35‑1210. Procurement requirements must not be artificially divided by governmental bodies so as to constitute a small purchase pursuant to this section.

(2) Competition and Price Reasonableness.

(a) No Competition. Small purchases not exceeding ten thousand dollars may be accomplished without securing competitive quotations if the prices are considered reasonable. The purchasing office must annotate the purchase requisition: ‘Price is fair and reasonable’ and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase ‘not in excess of’ may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement officer of the governmental body suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.

(b) Three Written Quotes. Written request for written quotes from a minimum of three qualified sources of supply may be made and, unless adequate public notice is provided in the South Carolina Business Opportunities, documentation of at least three bona fide, responsive, and responsible quotes must be attached to the purchase requisition for a small purchase not in excess of twenty‑five thousand dollars, or for a small purchase of commercially available off‑the‑shelf products not in excess of one hundred thousand dollars, or for a small purchase of construction not in excess of one hundred thousand dollars. The award must be made to the lowest responsive and responsible sources. The request for quotes must include a purchase description. Requests must be distributed equitably among qualified supplies unless advertised as provided above.

(c) Advertised Small Purchase. Written solicitation of written quotes, bids, or proposals may be made for a small purchase, other than a small purchase of construction, not in excess of one hundred thousand dollars. The procurement must be advertised at least once in the South Carolina Business Opportunities publication. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award must be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.

(3) Advertising Threshold. Except for procurements of either commercially available off‑the‑shelf products or construction, if conducted pursuant to item (2)(b), all competitive procurements above twenty‑five thousand dollars must be advertised at least once in the South Carolina Business Opportunities publication. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.

(4) The Division of Aeronautics of the Department of Commerce may act as its own purchasing agency for all procurements of maintenance services for aircraft and these procurements may be conducted pursuant to subsection (2)(b).”

**Sole source procurement public notice**

SECTION 26. Section 11‑35‑1560 of the 1976 Code is amended to read:

“Section 11‑35‑1560. (A) A contract may be awarded for a supply, service, information technology, or construction item without competition if, under regulations promulgated by the board, the chief procurement officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer, determines in writing that there is only one source for the required supply, service, information technology, or construction item. Except for contracts with a total potential value of fifty thousand dollars or less, adequate public notice of the intent to award without competition must be posted in South Carolina Business Opportunities, except that public notice is not required if the appropriate chief procurement officer, after consultation with the head of the purchasing agency, determines in writing that award without such notice is in the interest of the State. Notice must contain a statement of the right to protest under Section 11‑35‑4210(1) and must be posted at least five business days before entering a contract. For contracts with a total potential value greater than two hundred fifty thousand dollars, such notice must be posted at least ten business days before entering a contract.

(B) Written documentation must include the determination and basis for the proposed sole source procurement. A delegation of authority by either the chief procurement officer or the head of a governmental body with respect to sole source determinations must be submitted in writing to the Materials Management Officer. In cases of reasonable doubt, competition must be solicited. Any decision by a governmental body that a procurement be restricted to one potential vendor must be accompanied by a thorough, detailed explanation as to why no other will be suitable or acceptable to meet the need.

(C) A violation of these regulations by a purchasing agency, upon recommendation of the Division of Procurement Services with approval of the majority of the board, must result in the temporary suspension, not to exceed one year, of the violating governmental body’s ability to procure supplies, services, information technology, or construction items pursuant to this section.”

**Emergency procurements public notice**

SECTION 27. Section 11‑35‑1570 of the 1976 Code is amended to read:

“Section 11‑35‑1570. (A) Notwithstanding any other provision of this code, the chief procurement officer, the head of a purchasing agency, or a designee of either officer may award or authorize others to award emergency contracts only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations promulgated by the board; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(B) When a contract entered pursuant to subsection (A) has a total or potential value in excess of fifty thousand dollars, notice of the award must be posted in South Carolina Business Opportunities (SCBO) as soon as practicable thereafter. The posted notice must contain a statement of the right to protest under Section 11‑35‑4210(1).”

**Change order or contract modification**

SECTION 28. Subarticle 5, Article 5, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑1610. A change order or a contract modification may not alter a contract in a manner or degree inconsistent with the underlying purposes and policies of this code or the regulations of the board.”

**Public procurement units**

SECTION 29. Section 11‑35‑1810(3) of the 1976 Code is amended to read:

“(3) Right of Nondisclosure. Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the offices of the board, the Office of the Attorney General, the using agency, or the purchasing agency without prior written consent by the bidder or offeror.

(4) Public procurement units, as defined in Section 11‑35‑4610, may provide information to one another relating to the responsibility or prior performance of a bidder or offeror, or provide any other information about a bidder or offeror that is otherwise related to procurement. Any person affiliated with a public procurement unit in an official capacity, who provides such information in good faith, is immune from civil and criminal liability which might otherwise result by reason of his actions. In all such civil or criminal proceedings, good faith is a rebuttable presumption.”

**Cost or pricing data**

SECTION 30. Section 11‑35‑1830 of the 1976 Code is amended to read:

“Section 11‑35‑1830. (1) Contractor Certification. A contractor shall, except as provided in subsection (3) of this section, submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of mutually determined specified date prior to the date of:

(a) the pricing of any contract awarded by competitive sealed proposals pursuant to Section 11‑35‑1530, by competitive negotiations pursuant to Section 11‑35‑1535, or pursuant to the sole source procurement authority as provided in Section 11‑35‑1560 where the total contract price exceeds an amount established by the board in regulations; or

(b) the pricing of any change order or contract modification which exceeds an amount established by the board in regulations.

(2) Price Adjustment. Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the State, including profit or fee, shall be adjusted to exclude any significant sums by which the State finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between parties.

(3) Cost or Pricing Data Not Required. The requirements of this section shall not apply to contracts:

(a) where the contract price is based on adequate price competition;

(b) where the contract price is based on established catalog prices or market prices;

(c) where contract prices are set by law or regulations;

(d) where it is determined in writing in accordance with regulations promulgated by the board that the requirements of this section may be waived and the reasons for such waiver are stated in writing.”

**Promulgate regulations**

SECTION 31. Subarticle 7, Article 5, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑1840. The board may promulgate regulations to prescribe responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest. The aims of such regulations are preventing the existence of conflicting roles that might bias a contractor’s judgement, and preventing unfair competitive advantage.”

**Effect of contract or amendment**

SECTION 32. Subarticle 9, Article 5, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑2015. A contract or amendment thereto, including, but not limited to, a change order or contract modification, is not effective against a governmental body unless the contract or amendment is in writing and signed by an officer having actual authority to bind the governmental body.”

**Multiterm contracts authority approval**

SECTION 33. Section 11‑35‑2030 of the 1976 Code is amended to read:

“Section 11‑35‑2030. (1) Specified Period. Unless otherwise provided by law, a contract for supplies, services, or information technology must not be entered into for any a period of more than one year unless approved in a manner prescribed by regulation of the board. The term of the contract and conditions of renewal or extension must be included in the solicitation and funds must be available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods must be subject to the availability and appropriation of funds for them.

(2) Determination Prior to Use. Before the utilization of a multiterm contract, it must be determined in writing by the appropriate governmental body that:

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

(b) such a contract serves the interest of the State by encouraging effective competition or otherwise promoting economies in state procurement.

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

(4) Maximum Duration. The maximum potential duration for a contract is five years. A maximum potential duration of up to seven years may be approved by the appropriate chief procurement officer.

(5) Authority Approval. Every type of contract with a maximum potential duration exceeding seven years must be approved by the board. For competitive procurements, approval of the maximum potential duration must be granted before solicitation.”

**Inapplicable laws**

SECTION 34. Subarticle 9, Article 5, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑2040. The following laws are inapplicable to contracts solely for the procurement of commercially available off‑the‑shelf products pursuant to Section 11‑35‑1550:

(1) Chapter 14, Title 8, Unauthorized Aliens and Public Employment;

(2) Section 11‑9‑105, Contracts for Legal or Consultant Services;

(3) Section 11‑35‑5300, Prohibition of Contracting with Discriminatory Business;

(4) Chapter 57, Title 11, Iran Divestment Act;

(5) Chapter 107, Title 44, Drug‑Free Workplace Act; and

(6) any other provision of law identified by regulation of the board, that the board determines sets forth policies, procedures, or requirements that impact the procurement of commercially available off‑the‑shelf products by the State, except for a provision of law that: (i) provides for criminal or civil penalties; (ii) appears in Article 17 of this chapter; or (iii) specifically refers to this section and provides that, notwithstanding this section, it is applicable to contracts for the procurement of commercially available off‑the‑shelf products.”

**Void contract terms or conditions**

SECTION 35. Subarticle 9, Article 5, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑2050. Any term or condition in any contract entered into by the State that requires the State to defend, indemnify, or hold harmless another person, must be void ab initio, unless such term is expressly authorized by law. All contracts must be governed by South Carolina law. Without limiting the applicability of Section 11‑35‑4230, the exclusive venue for any dispute arising out of or related to any contract is in South Carolina. Any contract containing any terms or conditions inconsistent with any of the foregoing are otherwise enforceable as if it did not contain such term or condition.”

**Finality of determinations**

SECTION 36. Section 11‑35‑2410(A) of the 1976 Code is amended to read:

“(A) The determinations required by the following sections and related regulations are final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law: Section 11‑35‑1520(7) (Competitive Sealed Bidding: Correction or Withdrawal of Bids; Cancellation of Awards), Section 11‑35‑1520(11) (Competitive Sealed Bidding: Request for Qualifications), Section 11‑35‑1525(1) (Competitive Fixed Price Bidding: Conditions for Use), Section 11‑35‑1528(1) (Competitive Best Value Bidding: Conditions for Use), Section 11‑35‑1528(8) (Competitive Best Value Bidding: Award), Section 11‑35‑1529(1) (Competitive Online Bidding: Conditions for Use), Section 11‑35‑1530(1) (Competitive Sealed Proposals, Conditions for Use), Section 11‑35‑1530(4) (Competitive Sealed Proposals: Request for Qualifications), Section 11‑35‑1530(7) (Competitive Sealed Proposals, Selection and Ranking of Prospective Offerors), Section 11‑35‑1530(9) (Competitive Sealed Proposals Award), Section 11‑35‑1535(A) (Competitive Negotiations: Conditions for Use), Section 11‑35‑1535(C) (Competitive Negotiations: Request for Qualifications), Section 11‑35‑1535(G) (Competitive Negotiations; Evaluation), Section 11‑35‑1535(H) (Competitive Negotiations: Competitive Range), Section 11‑35‑1535(J) (Competitive Negotiations: Proposal Revisions, elimination or removal from the competitive range), Section 11‑35‑1535(K) (Competitive Negotiations: Award), Section 11‑35‑1540 (Negotiations After Unsuccessful Competitive Sealed Bidding), Section 11‑35‑1560 (Sole Source Procurement), Section 11‑35‑1570 (Emergency Procurement), Section 11‑35‑1710 (Cancellation of Invitation for Bids or Requests for Proposals), Section 11‑35‑1810 (Responsibility of Bidders and Offerors), Section 11‑35‑1830(3) (Cost or Pricing Data, Cost or Pricing Data Not Required), Section 11‑35‑2010 (Types and Forms of Contracts), Section 11‑35‑2020 (Approval of Accounting System), Section 11‑35‑2030(2) (Multiterm Contracts, Determination Prior to Use), Section 11‑35‑3010(1) (Choice of Project Delivery Method), Section 11‑35‑3020(d) (Construction Procurement Procedures: Negotiations After Unsuccessful Competitive Sealed Bidding), Section 11‑35‑3023 (Prequalification on State Construction), Section 11‑35‑3220(5) (Procurement Procedure, Selection and Ranking of the Three Most Qualified), Section 11‑35‑4210(7) (Stay of Procurement During Protests, Decision to Proceed), and Section 11‑35‑4810 (Cooperative Use of Supplies, Services, or Information Technology).”

**Privileged communications**

SECTION 37. Section 11‑35‑2420 of the 1976 Code is amended to read:

“Section 11‑35‑2420. (A) When any information or allegations concerning anticompetitive practices among any bidders or offerors, come to the attention of any employee of the State, immediate notice of the relevant facts shall be transmitted to the Office of the Attorney General.

(B) Communications to the Office of the Attorney General and any testimony relating to the matters described in Section 11‑35‑2420(A) are privileged and may not be disclosed without prior approval of the Office of the Attorney General. A person required or permitted to report pursuant to Section 11‑35‑2420(A) or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is a rebuttable presumption.”

**Project delivery method approval**

SECTION 38. Section 11‑35‑3010 of the 1976 Code is amended by adding an appropriately numbered subsection to read:

“( ) In addition to the requirement of subsection (1), use of the project delivery methods authorized by Section 11‑35‑3005(1)(e), (1)(f), and (2) must be approved by the board if the total potential value of the overall transaction exceeds twenty‑five million dollars.”

**Source selection methods assigned to project delivery methods**

SECTION 39. Section 11‑35‑3015(1), (5), (6), and (7) of the 1976 Code is amended to read:

“(1) Scope. This section specifies the source selection methods applicable to procurements for the project delivery methods identified in Section 11‑35‑3005 (Project delivery methods authorized), except as provided in Sections 11‑35‑1550 (Small Purchases), 11‑35‑1560 (Sole Source Procurement), 11‑35‑1570 (Emergency Procurements), 11‑35‑3230 (Exception for small architect‑engineer, and land surveying services contract), 11‑35‑3310 (Indefinite quantity contracts for architectural‑engineering, and land surveying services), and 11‑35‑3320 (Indefinite quantity contracts for construction).

(5) Design‑build. Contracts for design‑build must be procured by competitive sealed proposals, as provided in Section 11‑35‑1530 (Competitive Sealed Proposals) or competitive negotiation, as provided in Section 11‑35‑1535 (Competitive Negotiations).

(6) Design‑build‑operate‑maintain. Contracts for design‑build‑operate‑maintain must be procured by competitive sealed proposals, as provided in Section 11‑35‑1530 (Competitive Sealed Proposals) or competitive negotiation, as provided in Section 11‑35‑1535 (Competitive Negotiations).

(7) Design‑build‑finance‑operate‑maintain. Contracts for design‑build‑finance‑operate‑maintain must be procured by competitive sealed proposals, as provided in Section 11‑35‑1530 (Competitive Sealed Proposals) or Section 11‑35‑1535 (Competitive Negotiations).”

**Construction procurement adequate notice**

SECTION 40. Section 11‑35‑3020 of the 1976 Code is amended to read:

“Section 11‑35‑3020. Exceptions in Competitive Sealed Bidding Procedures. The process of competitive sealed bidding as required by Section 11‑35‑3015(2)(b) must be performed in accordance with the procedures outlined in Article 5 of this code subject to the following exceptions:

(a) Invitation for Bids. Each governmental body is responsible for developing a formal invitation for bids for each state construction project. The invitation must include, but not be limited to, all contractual terms and conditions applicable to the procurement. A copy of each invitation for bids must be filed with the State Engineer’s Office and must be advertised formally in an official state government publication. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. The manner in which this official state government publication must be published, the content of the publication itself, the frequency of the publication, the method of subscription to the publication, and the manner by which the publication is distributed must be established by regulation of the board.

(b) Bid Acceptance. Instead of Section 11‑35‑1520(6), the following provision applies. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The governmental body’s invitation for bids must set forth all requirements of the bid including, but not limited to:

(i) The governmental body, in consultation with the architect‑engineer assigned to the project, shall identify by license classification or subclassification in the invitation for bids all subcontractors who are expected to perform work for the prime contractor to or about the construction when those subcontractors’ contracts are each expected to exceed three percent of the prime contractor’s total base bid. In addition, the governmental body, in consultation with the architect‑engineer assigned to the project, may identify by license classification or subclassification in the invitation for bids a subcontractor who is expected to perform work which is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable pursuant to Section 11‑35‑4210 or another provision of this code. A bidder in response to an invitation for bids shall clearly identify in his bid only those subcontractors to perform the work as identified in the invitation for bids. If the bidder determines to use his own employees to perform a portion of the work for which he would otherwise be required to list a subcontractor and if the bidder is qualified to perform that work under the terms of the invitation for bids, the bidder shall list himself in the appropriate place in his bid and not subcontract that work except with the approval of the governmental body for good cause shown.

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

(iii) The governmental body shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening.

(c) Instead of Section 11‑35‑1520(10), the following provisions apply:

(i) Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice at a location that is specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of the bidder’s right to protest pursuant to Section 11‑35‑4210(1) and the date and location of posting must be announced at bid opening. In addition to posting notice, the governmental body promptly shall send all responsive bidders a copy of the notice of intended award and of the bid tabulation. The mailed notice must indicate the posting date and must contain a statement of the bidder’s right to protest pursuant to Section 11‑35‑4210(1).

(ii) After five business days’ notice is given, the governmental body may enter into a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. The procurement officer must comply with Section 11‑35‑1810.

(iii) If, at bid opening, only one bid is received and determined to be responsive and responsible and within the governmental body’s construction budget, award may be made without the five‑day waiting period.

(d) Negotiations after Unsuccessful Competitive Sealed Bidding. Instead of Section 11‑35‑1540, the following provisions apply:

(i) If bids received pursuant to an invitation for bids exceed available funds, and it is determined in writing by the governmental body that circumstances do not permit the delay required to resolicit competitive sealed bids, and the base bid, less deductive alternates, does not exceed available funds by an amount greater than ten percent of the construction budget established for that portion of the work, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder. The governmental body may change the scope of the work to reduce the price to be within the established construction budget but may not reduce the price below the established construction budget more than ten percent without a written request by the agency and the written approval of the chief procurement officer based on the interest of the State.

(ii) If the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the governmental body is able to identify additional funds for the project, as certified by the appropriate fiscal officers, in the amount of the difference between the lowest base bid and the approved available funds for the project, the governmental body shall submit a request to use those additional funds in accordance with Chapter 47, Title 2.”

**Prequalification on state construction**

SECTION 41. Section 11‑35‑3023 of the 1976 Code is amended to read:

“Section 11‑35‑3023. In accordance with this section, the applicable section of Article 5, and procedures published by the State Engineer, a governmental body may limit participation in a solicitation for construction to only those businesses, including potential subcontractors, that are prequalified. The prequalification process may be used only with the approval and supervision of the State Engineer’s Office. If fewer than two businesses are prequalified, the prequalification process must be canceled.”

**Applicability of competitive negotiations**

SECTION 42. Section 11‑35‑3024(1) and (2) of the 1976 Code is amended to read:

“(1) Applicability. In addition to the requirements of Section 11‑35‑1530 (Competitive Sealed Proposals) or Section 11‑35‑1535 (Competitive Negotiations), the procedures in this section apply as provided in items (2), (3), and (4) below.

(2) Content of Request for Proposals. A Request for Proposals for design‑build, design‑build‑operate‑maintain, or design‑build‑finance‑operate‑maintain:

(a) must include design requirements;

(b) must solicit proposal development documents; and

(c) may, if the governmental body determines that the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement:

(i) prequalify offerors in accordance with Section 11‑35‑3023 by issuing a request for qualifications in advance of the request for proposals;

(ii) select, pursuant to procedures designated in the Manual for Planning and Execution of State Permanent Improvements, a short list of responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award before discussions and evaluations pursuant to Section 11‑35‑1530, if the number of proposals to be short‑listed is stated in the Request for Proposals and prompt public notice is given to all offerors as to which proposals have been short‑listed; or

(iii) pay stipends to unsuccessful offerors, if the amount of the stipends and the terms under which stipends are paid are stated in the Request for Proposals.

Subsection (2)(c)(ii) is inapplicable if competitive negotiations are conducted pursuant to Section 11‑35‑1535.”

**Bond and security**

SECTION 43. Section 11‑35‑3030(1) and (2)(a) of the 1976 Code is amended to read:

“(1) Bid Security.

(a) Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts in a design‑bid‑build procurement in excess of one hundred thousand dollars and other contracts as may be prescribed by the State Engineer’s Office. Bid security is a bond provided by a surety company meeting the criteria established by the regulations of the board or otherwise supplied in a form that may be established by regulation of the board.

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

(c) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected except that a bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating must be given one working day from bid opening to cure the deficiencies. If the bidder is unable to cure these deficiencies within one working day of bid opening, his bid must be rejected.

(d) Withdrawal of Bids. After the bids are opened, they must be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw its bid in accordance with regulations promulgated by the board, action must not be had against the bidder or the bid security.

(2) Contract Performance Payment Bonds.

(a) When Required‑Amounts. Contracts for construction must require the following bonds or security:

(i) a performance bond satisfactory to the State, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the State, in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance;

(ii) a payment bond satisfactory to the State, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the State, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond must be in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance;

(iii) in the case of a construction contract valued at fifty thousand dollars or less, the governmental body may waive the requirements of subitems (i) and (ii) above, if the governmental body has protected the State;

(iv) in the case of a construction manager at‑risk contract, the solicitation may provide that bonds or security are not required during the project’s preconstruction or design phase, if construction does not commence until the requirements of subitems (i) and (ii) above have been satisfied. Additionally, the solicitation may provide that bonds or security as described in subitems (i) and (ii) above may be furnished for one or more designated portions of the project, in an amount equal to one hundred percent of the value of the construction of each designated portion, and also may prescribe the time of delivery of the bonds or security. In no event may construction of any portion of the work commence until the appropriate bonds or security have been delivered to the governmental body;

(v) in the case of a design‑build, design‑build‑operate‑maintain, or design‑build‑finance‑operate‑maintain contract, the solicitation may provide that bonds or security as described in subitems (i) and (ii) above may be furnished for one or more designated portions of the project, in an amount equal to one hundred percent of the value of the design and construction of each designated portion, and also may prescribe the time of delivery of the bonds or security. In no event may design or construction of any portion of the work commence until the appropriate bonds or security have been delivered to the governmental body.”

**Contract clauses and their administration**

SECTION 44. Section 11‑35‑3040(1)(a) of the 1976 Code is amended to read:

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

(i) all changes in the work within the general scope of the contract; and

(ii) all changes in the time of performance of the contract which do not alter the general scope of the contract work;”

**Approval of changes consistent with applicable regulations**

SECTION 45. Section 11‑35‑3070 of the 1976 Code is amended to read:

“Section 11‑35‑3070. Consistent with any applicable regulation of the board, a governmental body may approve and pay for amendments to architectural/engineering contracts and change orders to construction contracts, within the governmental body’s authority, which do not alter the general scope or intent of the project and which do not exceed the previously approved project budget.”

**Adequate notice of invitation**

SECTION 46. Section 11‑35‑3220(2)(b) and (3) of the 1976 Code is amended to read:

“(b) The invitation must include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, the submission deadline, and how interested firms may apply for consideration. The agency selection committee shall file a copy of the project description and the invitation with the State Engineer’s Office. Adequate notice of the invitation must be given at a reasonable time before the date set forth in it for receipt of responses. The invitation must be advertised formally in an official state government publication. The manner in which this official state government publication must be published, the content of the publication itself, the frequency of the publication, the method for subscription to the publication, and the manner by which the publication is distributed must be established by regulation of the board.

(3) Response to Invitation. The date for submission of information from interested persons or firms in response to an invitation must not be less than fifteen days after publication of the invitation. Interested architect‑engineer, construction management, and land surveying persons or firms shall respond to the invitation with the submission of a current and accurate Federal Standard Form 330, Architect‑Engineer and Related Services Questionnaire, or successor form or similar information as the State Engineer may specify in the Manual for Planning and Execution of State Permanent Improvement Projects, Part II, and other information that the particular invitation may require.”

**Value of small contracts**

SECTION 47. Section 11‑35‑3230 of the 1976 Code is amended to read:

“Section 11‑35‑3230. (1) Procurement Procedures for Certain Contracts. A governmental body securing architect‑engineer, construction management, or land surveying services which are estimated not to exceed fifty thousand dollars may award contracts by direct negotiation and selection, taking into account:

(a) the nature of the project;

(b) the proximity of the architect‑engineer or land surveying services to the project;

(c) the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time;

(d) past performance; and

(e) ability to meet project budget requirements.

(2) Maximum Value of Small Contracts with One Person or Firm. The total value of contracts awarded to a single architectural engineering, construction management, or land surveying firm by a single governmental body pursuant to subsection (1) may not exceed one hundred fifty thousand dollars in a twenty‑four‑month period. Persons or firms seeking to render professional services pursuant to this section shall furnish the governmental body with whom the firm is negotiating a list of professional services, including fees paid for them, performed for the governmental body during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.

(3) Submission of Contracts to State Engineer’s Office. Copies of contracts, including the negotiated scope of services and fees, awarded pursuant to this section must be submitted to the State Engineer’s Office for information.

(4) Splitting of Larger Projects Prohibited. A governmental body may not break a project into small projects for the purpose of circumventing the provisions of Section 11‑35‑3220 and this section.

(5) When negotiating a contract pursuant to this section, a governmental body may not negotiate with a firm unless any unsuccessful negotiations with a different firm have been concluded in writing. Once negotiations with a firm have been concluded, negotiations may not be reopened.”

**Establishment of indefinite quantity contracts**

SECTION 48. Article 10, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑3305. With the approval of the appropriate chief procurement officer, and in accordance with any applicable regulations, a procurement officer may establish contracts providing for an indefinite quantity, within state maximum or minimum limits, of specified supplies, service, or information technology, to be furnished during a fixed period, and that provide for the issuance of orders for delivery or performance of individual requirements during the period of the contract. The appropriate chief procurement officer may establish the contracts on behalf of any governmental body or for use by any public procurement unit.”

**Indefinite quantity contracts**

SECTION 49. Section 11‑35‑3310 of the 1976 Code is amended to read:

“Section 11‑35‑3310. (1) General Applicability. Indefinite quantity contracts may be awarded on an as‑needed basis for architectural‑engineering and land‑surveying services pursuant to Section 11‑35‑3220.

(2) Architectural‑Engineering and Land‑Surveying Services. When architectural‑engineering and land‑surveying services contracts are awarded, each contract must be limited to a total expenditure of three hundred thousand dollars for a two‑year period with individual project expenditures not to exceed one hundred thousand dollars; however, for public institutions of higher learning, and for technical college service contracts authorized by the State Board for Technical and Comprehensive Education, these limits shall be five hundred thousand dollars for total expenditures and two hundred thousand dollars for individual expenditures within the time periods specified.

(3) Small Indefinite Quantity Contracts. Small indefinite quantity contracts for architectural‑engineering and land‑surveying services may be procured as provided in Section 11‑35‑3230. A contract established under this section must be subject to Section 11‑35‑3230, and any applicable regulations.”

**Task order contract**

SECTION 50. Article 10, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑3320. (A) The term ‘task order contract’ means a contract that does not procure or specify a firm quantity of services, other than a minimum or maximum quantity, and that provides for the issuance of task orders for the performance of tasks during the period of the contract. Subject to the requirements of this section and other applicable law, a governmental body may enter into task order contracts to acquire construction services when the exact time or exact quantities of future tasks are not known at the time of contract award. In accordance with Section 11‑35‑4810, the State Engineer may award task order contracts on behalf of any governmental body and for use by any state public procurement unit authorized by the State Engineer.

(B) At any given time, a governmental body may enter into task order contracts with four businesses for each geographic area for each licensing classification and subclassification for construction. Licensing classification and subclassification has the meaning provided by Chapter 11, Title 40. Except as otherwise provided in this section, a task order contract for construction must be procured as provided in Section 11‑35‑1530, not including paragraph (4) (Request for Qualifications) or paragraph (8) (Negotiations). All evaluations must be conducted by a panel composed of at least three members. A governmental body shall invite the State Engineer or his designee to serve as one of the panel members. Except as provided by regulation, award must be made to the four responsible offerors whose proposals are determined in writing to be the most advantageous to the State, taking into consideration the evaluation factors set forth in the request for proposals. The contract file must contain the basis on which the awards will be made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contracts must be the same as those provided in Section 11‑35‑1520(1) (Award). Section 11‑35‑3023 does not apply to contracts awarded pursuant to this section.

(C) Limitations on task order contracts.

(1) A task order contract awarded for geographic area may not be used to perform services at a different geographic area.

(2) A task order contract may not exceed five years, including extensions.

(3) Total expenditures pursuant to all task order contracts for construction resulting from a single solicitation may not exceed four million dollars.

(4) The total construction cost of a single project performed using multiple task orders or task orders in combination with other types of contracts may not exceed five hundred thousand dollars. Projects may not be divided artificially to avoid this limitation.

(5) A single project must not be performed using task order contracts for construction in combination with contracts awarded pursuant to Section 11‑35‑1550. Standards for determining whether work constitutes a single project must be established in the Manual for Planning and Execution of State Permanent Improvements.

(D) Limitations on task orders.

(1) A task order must clearly specify all tasks to be performed or property to be delivered under the order so the full price for the performance of the work can be established when the order is placed. All task orders must be issued on a fixed‑price basis.

(2) A quote request for construction must be provided to all task order contractors. A task order for construction may not be issued unless the governmental body receives at least two responsive, bona fide, fixed‑price quotes. Any award must be issued to the contractor submitting the lowest responsive quote.

(3) All task orders must be issued within the period of the contract and must be within the scope and maximum value of the contract.

(4) A task order for construction may not be less than ninety thousand dollars and may not exceed three hundred fifty thousand dollars. Work may not be aggregated or divided artificially in order to avoid these limits.

(E) Any solicitation for a task order contract must include the following:

(1) the period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any;

(2) the maximum dollar value of the services to be procured under the contract;

(3) the minimum and maximum dollar value of the services to be procured under a single task order;

(4) a description that reasonably describes the licensing classification and the general scope, nature, complexity, and purposes of the services to be procured under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(5) the procedures that the governmental body will use for requesting fixed price quotes and for issuing orders, a restriction on communications between contractors regarding pending quote requests, and a requirement that all contractors must respond to all quote requests;

(6) the geographic area to which the task order contract applies. Ordinarily, a geographically contiguous area should not be subdivided; and

(7) the number of task order contracts to be awarded.

(F) Every award of a task order contract must be approved by the Office of the State Engineer and is subject to procedures or guidelines established in the Manual for Planning and Execution of State Permanent Improvements. A governmental body shall submit to the Office of the State Engineer any reports required by the Manual for Planning and Execution of State Permanent Improvements.

(G) Administrative review under Article 17 is not available for the award of an individual task order, except for a protest of the award of a task order on the ground that the order increases the scope, period, or maximum value of the task order contract under which the order is issued.”

**Contract clauses and their administration**

SECTION 51.A. Section 11‑35‑3410(1)(a) of the 1976 Code is amended to read:

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

B. Section 11‑35‑3410(2)(a)(vi) of the 1976 Code is amended to read:

“(vi) in the absence of agreement by the parties, through unilateral determination by the governmental body of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable sections of the regulations issued under Article 13 of this chapter, if any, and subject to the provisions of Article 17 of this chapter.”

**Allocation of proceeds for sale or disposal of surplus supplies**

SECTION 52. Section 11‑35‑3820 of the 1976 Code is amended to read:

“Section 11‑35‑3820. Except as provided in Section 11‑35‑3830 and the regulations pursuant thereto, the sale of all state‑owned supplies, or personal property not in actual public use must be conducted and directed by the Department of Administration. The sales must be held at such places and in a manner as in the judgment of the department is most advantageous to the State. Unless otherwise determined, sales must be by either public auction or competitive sealed bid to the highest bidder. Each governmental body shall inventory and report to the division all surplus personal property not in actual public use held by that governmental body for sale. The department shall deposit the proceeds from the sales, less expense of the sales, in the state general fund or as otherwise directed by regulation. This policy and procedure applies to all governmental bodies unless exempt by law.”

**Approval and record of trade‑in sales**

SECTION 53. Section 11‑35‑3830(2) and (3) of the 1976 Code is amended to read:

“(2) Approval of Trade‑In Sales. When the trade‑in value of personal property of a governmental body exceeds the specified amount, the Department of Administration shall have the authority to determine whether:

(a) the subject personal property shall be traded in and the value applied to the purchase of new like items; or

(b) the property shall be classified as surplus and sold in accordance with the provisions of Section 11‑35‑3820. The department’s determination shall be in writing and be subject to the provisions of this chapter.

(3) Record of Trade‑In Sales. Governmental bodies shall submit quarterly to the Division of Procurement Services a record listing all trade‑in sales made under subsections (1) and (2) of this section, including any applicable written determinations.”

**Proceeds from the sale of publications and materials**

SECTION 54. Section 11‑35‑3840 of the 1976 Code is amended to read:

“Section 11‑35‑3840. The Division of Procurement Services may license for public sale publications, including South Carolina Business Opportunities, materials pertaining to training programs, and information technology products that are developed during the normal course of its activities. The items must be licensed at reasonable costs established in accordance with the cost of the items. All proceeds from the sale of the publications and materials must be deposited in the State Treasury in a special account and expended only for the costs of providing the goods and services, and such funds may be retained and expended for the same purposes.”

**Sale of unserviceable supplies**

SECTION 55. Section 11‑35‑3850 of the 1976 Code is amended to read:

“Section 11‑35‑3850. Governmental bodies approved by the Department of Administration may sell any supplies owned by it after the supplies have become entirely unserviceable and can properly be classified as ‘junk’, in accordance with procedures established by the department. All sales of unserviceable supplies by the governmental body must be made in public to the highest bidder, after advertising for fifteen days, and the funds from the sales must be credited to the account of the governmental body owning and disposing of the unserviceable supplies.”

**Right to protest, procedure, duty and authority to attempt to settle, stay of procurement**

SECTION 56. Section 11‑35‑4210(1), (2), (3), and (7) of the 1976 Code is amended to read:

“(1) Right to Protest.

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

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(c) Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract pursuant to Section 11‑35‑1560 or Section 11‑35‑1570 shall notify the appropriate chief procurement officer in writing of its intent to protest within five business days of the date that award or notification of intent to award, whichever is earlier, is posted in accordance with this code. Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of such a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

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

(2) Protest Procedure. A protest pursuant to subsection (1) must be in writing, filed with the appropriate chief procurement officer, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. The protest must be received by the appropriate chief procurement officer within the time provided in subsection (1).

(3) Duty and Authority to Attempt to Settle Protests. Before commencement of an administrative review as provided in subsection (4), the appropriate chief procurement officer, the head of the purchasing agency, or their designees may attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The appropriate chief procurement officer has the authority to approve any settlement reached by mutual agreement.

(7) Automatic Stay of Procurement During Protests. In the event of a timely protest pursuant to subsection (1), the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel except that solicitation or award of a protested contract is not stayed if the appropriate chief procurement officer, after consultation with the head of the using agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the interest of the State.”

**Posting of bond or irrevocable letter of credit**

SECTION 57. Section 11‑35‑4215 of the 1976 Code is amended to read:

“Section 11‑35‑4215. The agency may request that the appropriate chief procurement officer require any bidder or offeror who files an action protesting the intended award or award of a contract solicited under Article 5 of this code and valued at one million dollars or more to post with the appropriate chief procurement officer a bond or irrevocable letter of credit payable to the State of South Carolina in an amount equal to one percent of the total potential value of the contract as determined by the appropriate chief procurement officer. The chief procurement officer’s decision to require a bond or irrevocable letter of credit is not appealable under Article 17. The bond or irrevocable letter of credit shall be conditioned upon the payment of all reasonable reimbursement costs which may be adjudged against the bidder or offeror filing the protest in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. For protests of sole source or emergency procurements, the bond or irrevocable letter of credit shall be in an amount equal to one percent of the requesting agency’s estimate of the contract amount for the sole source or emergency procurement requested. In lieu of a bond or irrevocable letter of credit, the appropriate chief procurement officer may accept a cashier’s check or money order in the amount of the bond or irrevocable letter of credit. If, after completion of the administrative hearing process and any appellate court proceedings, the agency prevails, it may request that the Procurement Review Panel allow it to recover all reasonable reimbursement costs and charges associated with the protest which shall be included in the final order or judgment, excluding attorney’s fees. Upon payment of such costs and charges by the bidder or offeror protesting the intended award or award of a contract, the bond, irrevocable letter of credit, cashier’s check, or money order shall be returned to the bidder or offeror. Failure to pay such costs and charges by the bidder or offeror protesting the intended award or award of a contract shall result in the forfeiture of the bond, irrevocable letter of credit, cashier’s check, or money order to the extent necessary to cover the payment of all reasonable reimbursement costs adjudged against the protesting bidder or offeror. If the bidder or offeror prevails in the protest, the cost of providing the bond, irrevocable letter of credit or cashier’s check may be sought from the agency requesting the bond or irrevocable letter of credit; provided that in no event may the amount recovered exceed fifteen thousand dollars.”

**Authority to debar or suspend**

SECTION 58. Section 11‑35‑4220 of the 1976 Code is amended to read:

“Section 11‑35‑4220. (1) Authority. After reasonable notice to the person or firm involved, and a reasonable opportunity for that person or firm to be heard, the appropriate chief procurement officer has the authority to debar a person for cause from consideration for award of contracts or subcontracts. The appropriate chief procurement officer has authority to suspend a person or firm from consideration for award of contracts or subcontracts during an investigation if there is probable cause for debarment. The period of debarment or suspension is as prescribed by the appropriate chief procurement officer.

(2) Causes for Debarment or Suspension. The causes for debarment shall include, but not be limited to:

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

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

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

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

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

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

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

(f) violation of the Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended, as determined by the State Ethics Commission, as an incident to obtaining or attempting to obtain a public contract or subcontract, or in the performance of the contract, or subcontract; and

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

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

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

(5) Finality of Decision. A decision pursuant to subsection (3) is final and conclusive, unless fraudulent or unless the debarred or suspended person requests further administrative review by the Procurement Review Panel pursuant to Section 11‑35‑4410(1), within ten days of the posting of the decision in accordance with Section 11‑35‑4220(4). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and must be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body must have the opportunity to participate fully in any review or appeal, administrative or legal.

(6) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organization elements, or commodities. The debarring official may extend the debarment decision to include any principals and affiliates of the contractor if they are specifically named and given written notice of the proposed debarment and an opportunity to respond. For purposes of this section, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment. For purposes of this section, the term ‘principals’ means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity including, but not limited to, a general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions.

(7)(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual’s performance of duties for or on behalf of the contractor, or with the contractor’s knowledge, approval, or acquiescence. The contractor’s acceptance of the benefits derived from the conduct is evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor’s conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct is evidence of such knowledge, approval, or acquiescence.

(8) The chief procurement officers shall maintain and update a list of debarred and suspended persons, and shall make the list publicly available.”

**Division of Procurement Services**’ **authority to resolve contract controversies**

SECTION 59. Section 11‑35‑4230(1) and (2) of the 1976 Code is amended to read:

“(1) Applicability. This section applies to controversies between a governmental body and a contractor or subcontractor, when the subcontractor is the real party in interest, which arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. The procedure set forth in this section constitutes the exclusive means of resolving a controversy between a governmental body and a contractor or subcontractor, when the subcontractor is the real party in interest, concerning a contract governed by the provisions of the South Carolina Consolidated Procurement Code. On behalf of any governmental body or South Carolina public procurement unit that participates in a multiagency, term, or cooperative contract awarded by or under the authority of a chief procurement officer, the Division of Procurement Services may initiate and pursue resolution of any contract controversy which arises under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(2) Request for Resolution; Time for Filing. Either the contracting state agency or the contractor or subcontractor, when the subcontractor is the real party in interest, may initiate resolution proceedings before the appropriate chief procurement officer by submitting a request for resolution to the appropriate chief procurement officer in writing setting forth the specific nature of the controversy and the specific relief requested with enough particularity to give notice of every issue to be decided. A request for resolution of contract controversy must be filed within one year after the date the contractor last performs work under the contract or within one year after the claim accrues, whichever is later; except that in the case of latent defects a request for resolution of a contract controversy must be filed within three years of the date the requesting party first knows or should know of the grounds giving rise to the request for resolution.”

**Solicitations or awards in violation of the law**

SECTION 60. Section 11‑35‑4310(1) and (3) of the 1976 Code is amended to read:

“(1) Applicability. The provisions of this section apply where it is determined by either the appropriate chief procurement officer or the Procurement Review Panel, upon administrative review, that a solicitation or award of a contract is in violation of the law. The remedies set forth herein may be granted by either the appropriate chief procurement officer, only after review under Section 11‑35‑4210, or by the Procurement Review Panel, only after review under Section 11‑35‑4410(1).

(3) Remedies After Award. If, after an award of a contract, it is determined that the solicitation or award is in violation of law:

(a) the contract may be ratified and affirmed, provided it is in the interest of the State; or

(b) the contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded.”

**Unauthorized award or modification of a contract**

SECTION 61. Subarticle 2, Article 17, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑4315. The board may provide by regulation for appropriate action where it is discovered either: (a) that a person lacking actual authority has made an unauthorized award or modification of a contract, or (b) that a contract award or modification is otherwise in violation of the Consolidated Procurement Code or these regulations.”

**Rights and remedies**

SECTION 62. Subarticle 2, Article 17, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑4340. There is no remedy against the State other than those provided in this chapter in any case involving a procurement subject to this code. The rights and remedies granted in this article are to the exclusion of all other rights and remedies against the State for matters arising out of or related to this code.”

**Finality of the Procurement Review Panel**

SECTION 63. Section 11‑35‑4410(6) of the 1976 Code is amended to read:

“(6) Finality. Notwithstanding another provision of law, including the Administrative Procedures Act, the decision of the Procurement Review Panel is final as to administrative review and may be appealed only to the court of appeals pursuant to Section 1‑23‑380, and the filing of an appeal does not stay a decision of the panel.”

**Final order not appealed**

SECTION 64. Subarticle 3, Article 17, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑4425. If a final order of a chief procurement officer or the Procurement Review Panel is not appealed in accordance with the provisions of this code, upon request of a party to the proceedings, the chief procurement officer or Procurement Review Panel may file a certified copy of the final ruling with a clerk of the circuit court, or a court of competent jurisdiction, as requested. After filing, the certified ruling has the same effect as a judgment of the court where filed and may be recorded, enforced, or satisfied in the same manner as a judgment of that court.

Section 11‑35‑4430. Unless required for the disposition of ex parte matters authorized by law, members or employees of the panel assigned to render a decision or to make findings of fact and conclusions of law in a matter pending before the panel shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. A panel member: (a) may communicate with other members of the panel, and (b) may have the aid and advice of one or more personal assistants. Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than two hundred fifty dollars or imprisoned for not more than six months.”

**Definitions**

SECTION 65. Section 11‑35‑4610 of the 1976 Code is amended to read:

“Section 11‑35‑4610. As used in this article, unless the context clearly indicates otherwise:

(1) ‘Cooperative purchasing’ means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement activity.

(2) ‘External procurement activity’ means:

(a) any buying organization not located in this State which, if located in this State, would qualify as a public procurement unit;

(b) buying by the United States government.

(3) ‘Local public procurement unit’ means any political subdivision or unit of this State which expends public funds for the procurement of supplies, services, information technology, or construction.

(4) ‘Mandatory opting’ is the requirement for a local procurement unit to choose whether to utilize a state contract before it is established as prescribed in regulation by the board.

(5) ‘Public procurement unit’ means any of the following:

(a) a local public procurement unit;

(b) a state public procurement unit;

(c) an external procurement activity; or

(d) any not‑for‑profit entity comprised only of more than one activity or unit listed in subitems (a), (b), or (c), if and as approved in writing by the Materials Management Officer.

(6) ‘State public procurement unit’ means the offices of the chief procurement officers, any purchasing agency of this State, and any other unit of South Carolina state government.”

**Cooperative purchasing**

SECTION 66. Section 11‑35‑4810 of the 1976 Code is amended to read:

“Section 11‑35‑4810. (1) Any public procurement unit may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, technology information, or construction with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi‑party contracts between public procurement units and open‑ended state public procurement unit contracts which shall be made available to local public procurement units, except as provided in Section 11‑35‑4820 or except as may otherwise be limited by the appropriate chief procurement officer.

(2) Without limiting other requirements of this code, all cooperative purchasing with other states conducted under this article must be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in Article 5 and, as applicable, Article 9 of this code, and consistent with the requirements of Section 11‑35‑2730 (Assuring Competition).

(3) The offices of the chief procurement officers, and any other purchasing agency of this State, may participate in cooperative purchasing as provided in Section 11‑35‑4810(1) only if the appropriate chief procurement officer determines in writing: (i) that participation is in the interest of the State, (ii) that the procurement will conform to subsection (2), if applicable, and (iii) that any entities responsible for the management and administration of the procurement, other than another state’s central procurement office, have in place appropriate and adequate internal controls to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process. In making his determination, the chief procurement officer shall evaluate and consider the impact on South Carolina businesses.

(4) Thirty days’ prior notice of a proposed multistate solicitation must be provided in accordance with Section 11‑35‑1520(3). Supplies acquired pursuant to such contracts may be distributed only through vendors with an in‑state office, as defined in Section 11‑35‑1524(A)(6), when available; provided, however, that the provisions of this paragraph do not apply to public institutions of higher learning if the institution demonstrates a cost savings to the appropriate chief procurement officer in regard to the multistate solicitation and procurement.”

**Sale, acquisition, or use of supplies by a public procurement unit**

SECTION 67. Section 11‑35‑4830 of the 1976 Code is amended to read:

“Section 11‑35‑4830. Any public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of Articles 5 and 15 of this chapter; provided, that such procurement shall take place only when the procuring entities have good reason to expect the intergovernmental procurement to be more cost effective than doing their own procurement.”

**Cooperative use of supplies or services**

SECTION 68. Section 11‑35‑4840 of the 1976 Code is amended to read:

“Section 11‑35‑4840. Any public procurement unit may enter into an agreement independent of the requirements of Articles 5 and 15 of this chapter with any other public procurement unit for the cooperative use of supplies, services, or information technology under the terms agreed upon between the parties; provided, that such cooperative use of supplies, services, or information technology shall take place only when the public procurement units have good reason to expect the cooperative use to be more cost effective than utilizing their own supplies and services.”

**Supply and proceeds of information services**

SECTION 69. Section 11‑35‑4860(3) and (5) of the 1976 Code is amended to read:

“(3) State Information Services. Upon request, the chief procurement officers may make available to public procurement units or external procurement activities the following services among others:

(a) standard forms;

(b) printed manuals;

(c) product specifications and standards;

(d) quality assurance testing services and methods;

(e) qualified product lists;

(f) source information;

(g) common use commodities listings;

(h) supplier prequalification information;

(i) supplier performance ratings;

(j) debarred and suspended bidders lists;

(k) forms for invitations for bids, requests for proposals, instruction to bidders, general contract provisions and other contract forms;

(l) contracts; or

(m) published summaries of contracts, including price and time of delivery information.

(5) Fees. The chief procurement officers may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (3) and (4) of this section. All proceeds from the sale of such services must be deposited in the State Treasury in a special account and expended only for the costs of providing the goods and services, and such funds may be retained and expended for the same purposes.”

**Payments from public procurement**

SECTION 70. Section 11‑35‑4870 of the 1976 Code is amended to read:

“Section 11‑35‑4870. All payments from any public procurement unit or external procurement activity received by the Division of Procurement Services in connection with sponsoring or administering a cooperative purchase, must be deposited in the State Treasury in a special account and expended only for the costs of providing the goods and services, and such funds may be retained and expended for the same purposes.”

**Public procurement units in compliance with code requirements**

SECTION 71. Section 11‑35‑4880 of the 1976 Code is amended to read:

“Section 11‑35‑4880. Where the public procurement unit administering a cooperative purchase complies with the requirements of this code, any public procurement unit participating in such a purchase shall be deemed to have complied with this code. Public procurement units shall not enter into a cooperative purchasing agreement for the purpose of circumventing this code.”

**Intergovernmental acquisitions**

SECTION 72. Subarticle 3, Article 19, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑4900. Intergovernmental Acquisitions.

(1) Any procurement by a governmental body from any other public procurement unit must be approved in advance of contracting by the applicable chief procurement officer unless either the supply, service, or information technology is expressly authorized by the enabling legislation of the governmental body supplying the item, or the board has exempted the type of procurement from such approval. Upon recommendation of the division, the board may establish criteria for approval. Absent approval, any procurement by a governmental body from any other public procurement unit must be in accordance with the other articles of this code.

(2) Any procurement by a governmental body from any other public procurement unit must be reported to the Division of Procurement Services quarterly. The division shall determine the means and content of the information to be reported. The division shall report to the board annually on such procurements.”

**Appeals to the court of appeals**

SECTION 73. Section 1‑23‑600(D) of the 1976 Code, as last amended by Act 134 of 2018, is further amended to read:

“(D) An administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of the State of South Carolina, 1895, or another law, except that an appeal from a final order of the Public Service Commission and the State Ethics Commission is to the Supreme Court or the court of appeals as provided in the South Carolina Appellate Court Rules, an appeal from the Procurement Review Panel is to the court of appeals as provided in Section 11‑35‑4410, and an appeal from the Workers’ Compensation Commission is to the court of appeals as provided in Section 42‑17‑60. An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence‑related credits pursuant to Section 24‑13‑210(A) or Section 24‑13‑230(A) or an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.”

**Annual audits**

SECTION 74. Section 57‑1‑490 of the 1976 Code is amended to read:

“Section 57‑1‑490. (A) The department shall be audited by a certified public accountant or firm of certified public accountants once each year to be designated by the State Auditor. The designated accountant or firm of accountants shall issue audited financial statements in accordance with generally accepted accounting principles, and such financial statements must be made available annually by October fifteenth to the General Assembly. The costs and expenses of the audit must be paid by the department out of its funds.

(B) The Legislative Audit Council shall contract for an independent performance and compliance audit of the department’s finance and administration division, mass transit division, and construction engineering and planning division. This audit must be completed by January 15, 2010. The Legislative Audit Council may contract for follow‑up audits or conduct follow‑up audits as needed based upon the audit’s initial findings. The costs of these audits, including related administrative and management expenses of the Legislative Audit Council, are an operating expense of the department. The department shall pay directly to the Legislative Audit Council the cost of the audits.

(C) Copies of every audit conducted pursuant to this section must be made available to the Department of Transportation Commission, the State Auditor, the Governor, the Chairmen of the Senate Finance and Transportation Committees, and the Chairmen of the House of Representatives Ways and Means and Education and Public Works Committees.”

**Department of Administration responsibilities**

SECTION 75. Article 1, Chapter 11, Title 1 of the 1976 Code is amended by adding:

“Section 1‑11‑190. The Department of Administration is responsible for:

(a) assessing the need for and use of information technology;

(b) evaluating the use and management of information technology;

(c) operating a comprehensive inventory and accounting reporting system for information technology;

(d) developing policies and standards for the management of information technology in state government;

(e) initiating a state plan for the management and use of information technology;

(f) providing management and technical assistance to state agencies in using information technology; and

(g) establishing a referral service for state agencies seeking technical assistance or information technology services.”

**Publication of interim regulations**

SECTION 76. No later than the first Monday in September after this act takes effect, the State Fiscal Accountability Authority shall publish interim regulations it will follow to implement changes to Chapter 35, Title 11 of the 1976 Code, as contained in this act. These interim regulations must be used in implementing this act until such time as the final rules and regulations are adopted in accordance with this section and Chapter 23, Title 1. No later than the first Monday in November after this act takes effect, the State Fiscal Accountability Authority shall publish a draft of the proposed final regulations it will follow to implement changes; provided, however, the interim regulations are not subject to the provisions of Chapter 23, Title 1.

**Repeal**

SECTION 77. Section 11‑35‑1580 of the 1976 Code is repealed.

**Indefinite Quantity Contracts redesignation**

SECTION 78. Article 10, Chapter 35, Title 11 of the 1976 Code is redesignated as “Indefinite Quantity Contracts”.

**Recodification**

SECTION 79. Section 11‑35‑35 is recodified as Section 11‑35‑5310. Section 11‑35‑50 is recodified as Section 11‑35‑5320. Section 11‑35‑55 is recodified as Section 11‑35‑5330. Section 11‑35‑70 is recodified as Section 11‑35‑5340.

**Time effective**

SECTION 80. This act takes effect upon approval by the Governor and applies to solicitations issued after that date.

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

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