SOUTH CAROLINA

PROCUREMENT CODE IN A NUTSHELL

September 19, 2013

Prepared by the Budget and Control Board
Division of Procurement Services
Office of Audit and Certification

Presented by Jimmy Aycock, Manager
Audit and Certification

THIS PAMPHLET IS NOT TO BE CONSTRUED AS A COPY OF THE CONSOLIDATED PROCUREMENT CODE AND IS ISSUED SIMPLY FOR INFORMATION

TABLE OF CONTENTS

	PAGE
Forward	1
Purpose and Policies	2
Obligation of Good Faith	2
Application of this Code	3
Payment for Goods and Services Received by State	3
Political Subdivisions Required to Develop and Adopt Procurement Laws	3
School District Subject to Consolidated Procurement Code	4
Determinations	4
Definitions	4
Reporting of Furniture and Certain Purchases	5
Public Access to Procurement Information	5
Exemptions	5
Chief Procurement Officers	5
Certification	6
Approval of Internal Procurement Procedures Manual	6
Audit and Fiscal Reporting	6
Administrative Penalties	6
Authority to Contract for Auditing Services	6
Authority to Contract for Legal Services	7
Authority to Contract for Certain Services	7
Methods of Source Selection	7
Competitive Sealed Bidding	7
Preferences	8
Competitive Fixed Price Bidding	8

Competitive Best Value Bidding 8

Competitive On-line Bidding 9

Competitive Sealed Proposals 8

Small Purchases (Less than $50,000.00) 9

Procurements At Auctions 10

Sole Source Procurement 10

Emergency Procurement 10

Information Technology Procurements 11

Telecommunications Procurements 11

Responsibility of Bidders 11

Multi-Term Contracts 11

Records of Procurement Actions 11

Construction, Architect-Engineer, Construction Management and Land Surveying Services 12

Regulations for Sale, Lease, Transfer and Disposal of Personal Property 12

Lease, Lease - Purchase, Installation Purchase and Rental of Personal Property 13

Legal and Contractual Remedies 13

Intergovernmental Relations 13

Assistance of Minority Business 15

Unauthorized Procurements 15

Drug-Free Work Place Act 16

Blanket Purchase Agreements 16

Procurement Card 16

HEEAPA (Higher Ed) 17

FORWARD

The South Carolina Consolidated Procurement Code, hereinafter referred to as the Code, was enacted in 1981 (Reference, Title 11, Chapter, Code of Laws of South Carolina 1976, as amended).

The State Government Accountability and Reform Act of 1993 made significant changes to the Code designed to update dollar limits, streamline processes and simplify procedures. Another major change came on June 13, 2006, when Gov. Mark Sanford signed S. 572 into law. General agency procurement authority increased from $25,000.00 to $50,000.00. The initial dollar threshold for competition rose from $1,500.01 to $2,500.01. The formal sealed bidding threshold rose from $25,000.00 to $50,000.00. The most recent amendment occurred in 2011 by Act No. 74 (HEEAPA) and became effective August 1, 2011. The Procurement Regulations were last amended effective May 23, 2008.

Although the Code currently provides central procurement authority with the Chief Procurement Officers for all procurements exceeding $50,000, governmental bodies may request additional authority through the certification process to increase the basic $50,000 limit to higher limits for established categories of procurements as well as for specific items that fall within the particular expertise of the agency.

This document is prepared in an attempt to highlight some of the Code's requirements. It is not intended to be, nor is it, all inclusive. It is merely a "nutshell" guide which references certain sections of the Code and Regulations. Further, this guide assumes the reader has a working knowledge of South Carolina State Government.

Procurement Code: http://www.scstatehouse.gov/code/t11c035.php

Procurement Regulations: http://www.scstatehouse.gov/coderegs/c019.php#19-445.2000

For a copy of the Procurement Code Booklet, contact Toyette Hazzard at (803) 737-0624 or email at THazzard@mmo.sc.gov.

CODE AND REGULATION REFERENCES

The following Code and Regulation references are of key interest:

I. PURPOSE AND POLICIES

Code Reference 11-35-20

This section of the Code expresses its underlying purposes and policies:

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.

Obviously, the Code intends to provide protection for state government, vendors that sell to state government and, primarily, the citizens of the State of South Carolina.

II. OBLIGATION OF GOOD FAITH

Code reference 11-35-30

Every contract or duty within this Code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

III. APPLICATION OF THIS CODE

Code Reference 11-35-40
Regulation Reference 19-445.2000A

The Code applies to every procurement or expenditure of funds by this State under contract acting through a governmental body irrespective of the source of funds. Where federal funds are used, the more restrictive requirements (federal or state) apply.

A governmental body, as defined in Section 11-35-310(18) of the Code, 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 branches of this State. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Office of Legislative Printing and information Technology Resources, and all local political subdivisions such as counties, municipalities, school districts, or public service or special purposes 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

Section 11-35-40(4) was added in 1987 to include, "The acquisition of a facility or capital improvement by a foundation or eleemosynary organization on behalf of or for the use of any state agency or institution of higher learning which involves the use of public funds in the acquisition, financing, construction, or current or subsequent leasing of the facility or capital improvement……" (Reference 1987 Act No. 170, Part II, 42)

IV. PAYMENT FOR GOODS AND SERVICES RECEIVED BY THE STATE

Code Reference 11-35-45

Upon satisfactory receipt of services, supplies, or information technology and proper invoice, whichever is received later, an agency has 30 work days to deliver vouchers for payment to the Comptroller General's Office. (Lump sum agencies are responsible for payment within 30 work days.)

Vouchers and payments not processed within 30 work days after satisfactory receipt of services, supplies, or information technology are subject to a late payment penalty charge up to 15% each year from funds available to the agency.

V. POLITICAL SUBDIVISION REQUIRED TO DEVELOP AND ADOPT PROCUREMENT LAWS

Code Reference 11-35-50

All political subdivision shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983.

VI. SCHOOL DISTRICTS SUBJECT TO CONSOLIDATED PROCUREMENT CODE

Code Reference 11-35-70

Irrespective of the source of funds, any school district whose budget of total expenditures, including debt service, exceeds $75 million annually is subject to the Code. However, they may develop an alternative code if, in the opinion of the Materials Management Office, it is substantially similar to the State Code.

A procurement audit of each one of these districts must be performed every three years.

VII. DETERMINATIONS

Code Reference 11-35-210

Written determinations expressly required by the code or regulations must be retained in an official contract file of the governmental body administering the contract.

VIII. DEFINITIONS

Code Reference 11-35-310

Definitions of key terms used in the Code and regulations

One definition of importance to you is that of a term contract. Section 11-35-310 (35) states: "Term Contracts" means contracts established by the chief procurement officer for specific supplies, service, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term. 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. A term contract may be a multi-term contract as provided in Section 11-35-2030.

IX. REPORTING OF FURNITURE AND CERTAIN PURCHASES

Code Reference 11-35-450

The purchase of furniture, floor coverings, wall coverings or other decorative or ornamental items must be reported to and approved by the governing board, commission, or council before the purchase when the cost exceeds $1,000 and is to be used in:

(1) an office or adjoining office utilized by an agency director or assistant agency director.
(2) A board room of conference room used as a board room

X. PUBLIC ACCESS TO PROCUREMENT INFORMATION

Code Reference 11-35-410

Procurement information must be a public record as required by the Freedom of Information Act with the exception of 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.

XI. EXEMPTIONS

Code Reference 11-35-710

The General Assembly exempted certain agencies, commodities and services from the Code. The Budget and Control Board may exempt specific supplies, services, information technology, or construction from the purchasing procedures of the Code. See http://www.mmo.sc.gov/PS/legal/PS-legal-procurement-law.phtm

XII. CHIEF PROCUREMENT OFFICER

Code Reference 11-35-810, 11-35-820, and 11-35-830 Regulation reference 19-445.2000(b)

The Code established the following chief procurement officers who are the authorities for their respective areas:

- Information Technology Management Officer - Information Technology
- State Engineer – Construction
- Materials Management Officer - Supplies and Services and Consultants

XIII. CERTIFICATION

Code Reference 11-35-1210
Regulation reference 19-445.2000(b) and 19-445.2020

These sections of the Code and regulations provide for authority to grant certification above $50,000.00 through the Budget and Control Board. Certification is contingent upon favorable audit results and recommendations by the designated board office.

NOTE: The $50,000.00 limit applies to the total potential commitment of a purchasing transaction. A one year contract for $30,000 with an extension option for an additional year is a $60,000 potential commitment.

XIV. APPROVAL OF INTERNAL PROCUREMENT PROCEDURES MANUAL

Regulation Reference 19-445.2005
Each governmental body shall develop and maintain an internal procurement procedures manual and forward a copy, and any revisions thereto, to the Materials Management Office for review and approval. The Manual must establish a clear means for vendors to identify procurement officers and their level of authority.

XV. AUDIT AND FISCAL REPORTING

Code Reference 11-35-540(4); 11-35-1230; 19-445.2000 (b)(2)(c); 19-445.2022

The Code and regulations authorize audits of procurement activity whether certification is requested or not. A Chief Procurement Officer may temporarily suspend procurement authority of an agency and may audit any governmental body regarding one or more procurement activities.

XVI. ADMINISTRATIVE PENALTIES

Code Reference 11-35-1240

The Budget and Control Board can prescribe administrative penalties for violations of the Code and regulations by imposing loss or reduction of procurement authority.

XVII. AUTHORITY TO CONTRACT FOR AUDITING SERVICES

Code Reference 11-35-1250
Regulation reference 19-445.2025(E)

Contract for auditing or accounting services must be approved in advance by the State Auditor.

XVIII. AUTHORITY TO CONTRACT FOR LEGAL SERVICES

Code Reference 11-35-1260
Regulation reference 19-445.2025(D)

Contract for the services of attorneys must be approved in advance by the State Attorney General.

XIX. AUTHORITY TO CONTRACT FOR CERTAIN SERVICES

Repealed in 2006

XX. METHODS OF SOURCE SELECTION

Code Reference 11-35-1510

This section lists the authorized source selection methods of the Code. All procurements, except for construction, must be made by one of these methods.

For goods and services, consultants, and information technology the methods are:

-Competitive Sealed Bidding
-Resident Vendor Preference
-Competitive Fixed Price Bidding
-Competitive Best Value Bidding
-Competitive On-line Bidding
-Competitive Sealed Proposals
-Bid Procedures on Procurements up to Fifty Thousand Dollars
-Sole Source
-Emergency
-Procurements at Auction or Bankruptcy

XXI. COMPETITIVE SEALED BIDDING

Code Reference 11-35-1520
Regulation Reference 19-445.2030

The default method of procurement for transactions greater than $50,000.00, governmental bodies process formal competitive sealed bids where award is based on low bid only. Formal solicitations must be developed. Sealed written bids must be returned before a designated date and time. When bids are received, they must be locked away unopened until the designated time. All bids must be tabulated with the tabulation sheet signed and witnessed. After evaluation of all bids, award is made to the lowest responsive and responsible bidder. All sealed bid solicitations must be advertised in South Carolina Business Opportunities (SCBO).
http://procurement.sc.gov/PS/general/scbo/PS-scbo-index.phtm

For contracts with a total or potential value in excess of $50,000 but less than $100,000, notice of award must be given by posting and must be sent to all bidders responding to the solicitation. For contracts with a total or potential value of $100,000 or more, notice of an intended award must be given by posting the notice for 10 days and must be sent to all bidders responding to the solicitation. 10 days after notice is given, an agency may enter into a contract. The invitation for bids and the notice must contain a bidder's right to protest.

XXII. PREFERENCES

Code Reference 11-35-1524

Revised and took effect September 8, 2009.

Commodity Contracts
Resident Vendor Preference - 7%
SC End Product Preference - 7%
US End Product Preference - 2%
RVP + SCEPP = 10%
RVP + USEPP = 9%

Service Contracts
Resident Contractor Preference - 7%
Resident Subcontractor Preference - 2% or 4%

See our web page at: http://procurement.sc.gov/PS/PS-preferences.phtm

XXIII. COMPETITIVE FIXED PRICE BIDDING

Code Reference 11-35-1525

The purpose of fixed price bidding is to provide multiple sources of supply for specific services, supplies, or information technology based on a preset maximum amount the State will pay. A written determination must be prepared to show why competitive sealed bidding is either not practicable or not advantageous to the State and why competitive fixed price bidding is advantageous. Notice of solicitation must be made per Section 11-35-1520(3). Bidders not responding to initial fixed price solicitations can be added if responsible and responsive. Failure of bidder to received business is not grounds for contract controversy under Section 11-35-4230.

XXIV. COMPETITIVE BEST VALUE BIDDING

Code Reference 11-35-1528

The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific services, supplies, or information technology based on pre-determined criteria identified by the state. A written determination must be prepared to show why competitive sealed bidding is either not practicable or not advantageous to the State and why competitive best value bidding

is advantageous. Notice of solicitation must be made per Section 11-35-1520(3). Evaluation factors shall be established with cost representing at least 60% of the numerical factor. Award will be made to the responsive and responsible bidder whose bid is most advantageous to the State taking into consideration all evaluation factors in the solicitation.

XXV COMPETITIVE ON-LINE BIDDING

Code Reference 11-35-1529

Works like a reverse auction. Bidders post their prices on-line and keep bidding down until the bid closes. Bids are posted in real time. Everyone knows the low bid. A written determination must be prepared to show why competitive sealed bidding is either not practicable or not advantageous to the State and why competitive on-line bidding is advantageous.

XXVI. COMPETITIVE SEALED PROPOSALS

Code Reference 11-35-1530
Regulation Reference 19-445.2095

Competitive sealed proposals, a formal competitive procurement procedure, where award is based on weighted evaluation factors. Low bid is not the only award criteria. Price may not even be a factor in the evaluation. The same solicitation requirements listed above for competitive sealed bidding apply except that award may be based on evaluation criteria other than cost such as experience and knowledge of the industry. Negotiations are allowed with responsive offerors.

Before an agency can make a request for proposal solicitation, it must prepare a determination justifying the use of this method instead of competitive sealed bidding.

XXVII. SMALL PURCHASE (LESS THAN $50,000.00)

Code Reference 11-35-1550
Regulation Reference 19-445.2100

Procurement less than $50,000.00 are made under this procurement procedure. Large procurements cannot be artificially divided to give the appearance of a small purchase. The solicitation requirements for dollar thresholds are as follows:

1 - Purchase not in excess of $2,500.00 - No competition is required if prices are considered fair and reasonable except for higher ed. See HEEAPA[1].

[1] HEEAPA amended the small purchase procedures for higher ed. See our detail explanation at: http://procurement.sc.gov/webfiles/MMO_NEWS/HEEAPPA-Announcement-Aug._2011.pdf
1-35-1550(2)(d) For public institutions of higher learning in this State excluding technical colleges, small purchase amounts to which the provisions of item XXVII (1) apply are those purchases not exceeding ten thousand dollars, and for these purchases item XXVII (2) does not apply. In addition, purchasing cards of the institution for these purchases also may be used by officials or employees of the institution as the governing board approves. (Also see our detailed explanation beginning on page 17 of this handout.)

2 - Purchases from $2,500.01 to $10,000.00 - Solicitations of three written quotations from qualified sources of supply, except for higher ed. See HEEAPA.

3 - Purchase from $10,000.01 to $50,000.00 - Written solicitations for written quotes, bids, or proposal are allowed. Each procurement must be advertised at least once in South Carolina Business Opportunities (SCBO) for no less than 7 days. A Request for Quotation form is a helpful tool for agencies.

Remember, these thresholds apply to the total potential commitment including fixed or optional extensions. The protest provisions of Section 11-35-4210 do not apply to procurements less than $50,000.00.

XXVIII. PROCUREMENTS AT AUCTION OR BANKRUPTCY

Code Reference 11-35-1575

A governmental body determines fair market value and establishes maximum price for item in advance of auction or a sale of supplies from a bankruptcy and does not exceed maximum price at the auction.

XXIX. SOLE SOURCE PROCUREMENTS

Code Reference 11-35-1560
Regulation Reference 19-445.2105

All agencies may make sole source procurements up to any amount as long as a written determination is approved in advance by the agency head or a designee above the level of the procurement officer and the item or service is both:

1 - Unique
2 - Available from only one source of supply
All sole sources must be reported quarterly to the Budget and Control Board

XXX. EMERGENCY PROCUREMENTS

Code Reference 11-35-1570
Regulation Reference 19-445.2110

All agencies may make emergency procurements up to any amount as long as a written determination is approved by an authorized official. Unlike sole source, this determination may be authorized by the procurement officer. There must be a condition that creates a serious need that cannot be met through normal purchasing procedures, which threatens public health, welfare, critical economy and efficiency or safety. Emergency procurements must be limited to the extent of the crisis. As much competition as is practical under the circumstances shall be obtained. All emergencies must be reported quarterly to the Budget and Control Board.

XXXI. INFORMATION TECHNOLOGY PROCUREMENTS

Code Reference 11-35-1580
Regulation Reference 19-445.2115

This section established the authority and responsibility of the Information Technology Management Office. It requires each agency to prepare an information technology plan annually to be submitted to the Budget and Control Board's Division of State Information Technology. Procurements of information technology greater than $50,000 must be submitted to the Information Technology Management Office of the designated board office unless your agency is certified in this procurement area.

XXXII. TELECOMMUNICATIONS PROCUREMENTS

Code Reference 1-11-430

This section of law designates all authority to purchase telecommunication equipment and services to the Budget and Control Board through the Division of State Information Technology. Certain exemptions apply to this authority as well.

XXXIII RESPONSIBILITY OF BIDDERS AND OFFERORS

Code Reference 1-35-1810

Responsibility of bidders shall be ascertained for each contract concerning capacity to meet the terms of the contract.

XXXIV. MULTI-TERM CONTRACT

Code Reference 11-35-2030
Regulation Reference 19-445.2135

These are contracts, which extend beyond 12 months. Written determinations are required prior to the solicitation for contracts with fixed terms beyond 12 months. Competition and authority thresholds are based on the total potential commitments. The maximum time for a multi-term contract is 5 years or up to 7 years if approved, prior to the original solicitation, by the designated board officer. Contracts exceeding 7 years must be approved, prior to the solicitation, by the Budget and Control Board.

XXXV. RECORD OF PROCUREMENT ACTIONS

Code Reference 11-35-2440

Agencies are required to report quarterly all sole source and emergency procurements to the chief procurement officers.

XXXVI. CONSTRUCTION, ARCHITECT-ENGINEER, CONSTRUCTION MANAGEMENT AND LAND SURVEYING SERVICES

Code Reference Article 9, 11-35-2910, 11-35-3005, 11-35-3010, 11-35-3015, 11-35-3020, 11-35-3021, 11-35-3023, 11-35-3024, 11-35-3025, 11-35-3030, 11-35-3035, 11-35-3037, 11-35-3040, 1-35-3050, 11-35-3060, 11-35-3070, 11-35-3210, 11-35-3215, 11-35-3220, 11-35-3230, 11-35-3240, 11-35-3245, 11-35-3310
Regulation Reference 19-445.2145

Before any procurement actions are initiated for projects anticipated to cost more than the State permanent improvement project limit[2] ($0 for land or buildings, $100,000 or $500,000), the project must be approved by the Joint Bond Review Committee and the Budget and Control Board. Once projects are approved, procurements of architect-engineer services, land surveyors, construction managers and construction contractors fall under the authority of the State Engineer's Office and are governed by the Manual for Planning and Execution of State Permanent Improvements. Some specifics are:

A. Architect-Engineer and land Surveyors

1. If fees will exceed $25,000 a formalized selection process must be followed.

2. If fees will not exceed $25,000 a contract may be negotiated with one firm.

B. Construction Management

Construction methods and construction management contracts must be approved by the State Engineer.

C. Construction Services

Construction procurements are made through the competitive sealed bid or other alternate delivery methods:

Only the State Engineer's Office and agencies certified for construction services may solicit bids for construction.

XXXVII. REGULATIONS FOR SALE, LEASE, TRANSFER AND DISPOSAL OF PERSONAL PROPERTY

Code Reference 11-35-3810, 11-35-3840
Regulation reference 19-445.2150

[2] The Permanent Improvement Project establishment and approval process is not a procurement process and is not addressed in this document. However, Higher Education Institutions should be aware that not all PIP levels were raised by HEEAPA, e.g. see the $500,000 level for new construction. Questions concerning the new PIP limits for Higher Education and the PIP approval process should be addressed to the Capitol Budgeting Unit of the B&CB.

A. Authority - Code 11-35-3820
Regulation 19-445.2150

Any disposal, sale, lease or transfer of public personal property must be approved by the designated board office.

B. Reporting - Regulation 19-445.2150(A)(2)

Item declared surplus to any agency must be reported to the Office of General Services, Surplus Property Management Office within 180 days.

C. Disposal - Code 11-35-3820, Regulation 19-445.2150(A)(2)

All disposals of surplus personal property must be conducted by the Surplus Property Management Office (SPMO). Agencies may request that surplus property sale proceeds, less service charges, be returned to them. If this occurs, the sale proceeds must be used for the purchase of like kind property. If return of proceeds is not requested, proceeds are deposited in the general fund of the State.

D. Trade-in Sales - Code 11-35-3830
Regulation 19-445.2150(g)

Governmental bodies may trade in personal property, who's original unit purchase price did not exceeded $5,000, the trade in value of which must be applied to the purchase of new item. When the original unit purchase price exceeds $5,000, the governmental body shall refer the matter to the SPMO for disposition. Governmental bodies must submit a listing of trade in sales quarterly to the Materials Management Office.

E. Sale of Junk - Code 11-35-3850
Regulation 19-4458.2150(h)

Surplus Property Management Office must declare junk. Once declared junk, property may be sold. If it is sold it must be advertising for 15 days in advance of the sale.

XXXVIII. LEASE, LEASE - PURCHASE, INSTALLMENT PURCHASE AND RENTAL OF PERSONAL PROPERTY

Regulation Reference 19-445.2152

The same competition requirements and authority limits apply.

(1) The State of South Carolina Standard Equipment Agreement will be used in all cases unless modifications are approved by the designated board officer or his designee. A purchasing agency may enter into an agreement for the rental of equipment without using the Standard Equipment Agreement when the agreement has a total potential value of fifteen thousand dollars or less or the agreement does not exceed ninety days in duration. Vendor agreements are not acceptable. Any alteration to the Standard Equipment Agreement must be approved by the designated Board office.

(2) Installment purchases will require the governmental body to submit both a justification and purchase requisition to the appropriate chief procurement officer or his designee for processing.

(3) All lease/purchase and installment sales contracts must contain an explicitly stated rate of interest to be incurred by the State under the contract.

XXXIX. LEGAL AND CONTRACTUAL REMEDIES

Code Reference - Article 17, 11-35-4210, 11-35-4410

Any actual or prospective bidder, offeror, contractor or subcontractor who is aggrieved in connection with a solicitation or award may protest. Anybody can protest any procurement of $50,000 or more. This includes sole sources and emergencies. Bidders must file an intent to protest within 10 days, then have 5 more days to perfect that protest

Protests are made first to the Chief Procurement Officer, then to the Procurement Review Panel. Beyond that, the aggrieved party may go to court.

XL. INTERGOVERNMENTAL RELATION

Code Reference Article 19, 11-35-4610, 11-35-4890

In 1983 the Code was changed to require competitive bidding for contracts between state agencies, However, on March 22, 1994, the Budget and Control Board modified its November 1984 exemption for interagency contracts. The Board delegated to the Office of General Services, now done by the Materials Management Office, the authority to exempt contracts between state agencies for supplies and services as follows.

In accordance with Section 11-35-710 of the Consolidated Procurement Code, delegated to the designated board office the authority to exempt contracts between state government agencies under Section 11-35-4830 and 1-35-4840 for supplies or services provided a cost justification is submitted to the Office in advance. The following types of contracts between state government agencies shall be exempt from the Consolidated Procurement Code and submission to General Services is not required: (1) agreements between state government agencies which are mandated by federal or state laws; and (2) services agreements between state government agencies for services authorized by that agency's enabling legislation as its purpose, duty, or mission. NOTE: See original exemption date 11/05/84

Interagency agreement procurement procedures are listed below in the order of preference:

1 - Competitive Solicitation
2 - Sole Source
3 - Exemption for Contracts Between State Agencies

Advance approval is required for exemption procedure. Cost justification is the prerequisite criteria.

XLI. ASSISTANCE TO MINORITY BUSINESSES

Cod Reference Article 21, 11-35-5010, 11-35-5270
Regulation Reference 19-445.2160
The Division of Procurement Services encourages the use of certified minority firms.

All agencies are required to prepare annually a Minority Business Enterprise Utilization Plan (MBE Plan) and submit it to the Governor's Office of Small Minority Business Assistance (OSMBA). This establishes an agency's intent and its goal for minority business procurements. It is due August 1 each year.

A. MBE Plan

Code Reference 11-35-5240
Regulation Reference 19-45.2160(e)

Progress reports must be submitted quarterly to the OSMBA within 10 days after the end of the quarter.

B. Reporting Procedures

Code Reference 11-35-5260
Regulation Reference 19-445-2160(e) and (g)

Annual reports must be submitted to the OSMBA no latter than 15 days after the end of the fiscal year.

XLII. UNAUTHORIZED PROCUREMENTS

Regulation Reference 19-445.2015

An unauthorized procurement is an act obligating the State in a contract by a person without the requisite authority to do so. There are 2 types of unauthorized procurements:

1 - Where someone with no procurement authority obligates the State
2 - Where a person or agency exceeds its procurement authority.
This means the total potential commitment.

Ratification request must provide the following:

1 - The facts and circumstances surrounding the act
2 - What corrective action is being taken to prevent recurrence
3 - Action taken against the individual committing the act
4 - Documentation that the price is fair and reasonable

XLIII DRUG FREE WORK PLACE ACT

Code Reference 44-107 et sq

No person, other than an individual, may receive a domestic grant or be awarded a domestic contract for the procurement of any goods, construction, or services for a stated or estimated value of fifty thousand dollars or more from any state agency unless the person has certified to the using agency that it will provide a drug-free work place. Besides competitive procurements, the drug-free certification also applies to sole source and emergency procurements. MMO and ITMO obtain drug-free certifications for state contracts.

XLIV. BLANKET PURCHASE AGREEMENTS

Regulation Reference 19-445.2100(B)

A blanket purchase agreement (BPA) is a simplified method of filing repetitive needs for small quantities of miscellaneous supplies, services, or information technology by establishing charge accounts with qualified sources of supply. Terms to be included in a BPA include a description of the agreement, time period the blanket applies usually not to exceed one year, maximum amount of the BPA, limits per call and persons authorized to place calls. When possible, BPAs should be placed concurrently with more than one supplier for the same items and the business rotated.

XLV. PROCUREMENT CARD

DESCRIPTION:	CORPORATE PURCHASING CARD/TRAVEL CARD "UMBRELLA" PROGRAM
CONTRACT TYPE:	STATEWIDE TERM
CONTRACT PERIOD:	08/01/06 – 07/31/2013 (MAXIMUM CONTRACT PERIOD)
CONTRACT NUMBER:	06-S7151-A12487 / 5000007644
CONTRACTOR:	**BANK OF AMERICA MERRILL LYNCH** 201 NORTH TRYON STREET CHARLOTTE, NC 28255

The Agency/Institution and its employee cardholders shall make purchases under the Purchasing Card Program only to the extent authorized by the Agency/Institution's appropriation authority and only to the extent that the Agency/Institution has appropriations available to pay any charges. The Agency/Institution is liable from its own appropriations for all transactions

Purchasing Card Information:
http://procurement.sc.gov/webfiles/MMO_spo/Contracts/pcards15.doc

SOUTH CAROLINA HIGHER EDUCATION EFFICIENCY
AND
ADMINISTRATIVE POLICIES ACT OF 2011

Changes to Procurement
(What the Act Does Not and Does Do)

On August 1, 2011, the South Carolina Higher Education Efficiency and Administrative Policies Act of 2011 (the "Act") became law. Among other things, the Act contains modifications to State law affecting procurement and construction project approval. This document addresses the nature and scope of the changes to procurement and construction. For clarity, Higher Education Institutions, as used in this document, means all public colleges, universities, and technical colleges.

I. **What the Act <u>DOES NOT</u> Do with Respect to Procurement**[1]

A. Procurement Certification: The Act does not increase any Higher Education Institution's procurement certification level.

B. Small Procurements: The Act did not raise the $50,000 cap on small procurements.

C. Procurement Cards: The Act does not authorize Higher Education Institutions to use the p-card for expenditures prohibited by the State P-Card Policy. Prohibited expenditures include but may not be limited to:

1. Personal purchases of any kind (Personal purchases are defined as purchases of goods or services intended for non-work related use or use other than official State business).
2. Cash advances including use of the card or card number at Automated Teller Machines (ATMs), inside bank branches or at cash advance, quasi-cash and money transfer locations such as Western Union, Telecheck, etc.
3. Gift cards, stored value cards, calling cards, pre-paid cards or similar products.
4. Employee travel expenses, including lodging, transportation (except airline tickets), and meals.
5. Entertainment, including in-room movies.
6. Alcoholic beverages.
7. Tobacco products.
8. Fuel, repairs, and maintenance of State-owned or rental vehicles. Many of these purchases may be made with the State Fuel Credit Card, an alternate program.
9. Professional services.
10. Food for consumption by State employees.

For an all inclusive list of prohibited P-Card expenditures, consult the state's P-Card policies and procedures manual at http://www.mmo.sc.gov/webfiles/MMO_spo/Contracts/ProcCardRev.pdf.

[1] The Permanent Improvement Project establishment and approval process is not a procurement process and is not addressed in this document. However, Higher Education Institutions should be aware that not all PIP levels were raised, e.g. see the $500,000 level for new construction. Questions concerning the new PIP limits for Higher Education and the PIP approval process should be addressed to the Capitol Budgeting Unit of the B&CB.

D. Small Architect-Engineer Procurements: The Act does not change the small procurement limits for Architect-Engineer procurements under SC Code Ann § 11-35-3230.

E. Indefinite Delivery Contract Expenditure Caps: Not all Higher Education Institutions are automatically granted authority to use higher expenditure caps on their Indefinite Delivery Contracts.

F. Multi-State Cooperative Contracts (Article 19 of the Code): The changes to Section 11-35-4810 remove some impediments to cooperative purchasing, but they do not grant Higher Education Institutions either an exemption from the Code or blanket authority to join multi-state cooperative contracts. Higher Education Institutions and Agencies can only participate in cooperative purchases approved by the Office of State Procurement that are sponsored by a public entity, and any participation is subject to the other provisions of the Procurement Code, including certification and the procurement processes required by the Consolidated Procurement Code.

II. **What the Act Does Do with Respect to Procurement**

A. Higher Education Institutions Divided Into Two Categories: Without attempting to define these groups or add to the statutes, the Act generally addresses two categories of Higher Education Institutions: the Technical Colleges and all other Colleges & Universities. For Colleges & Universities, the increases to the bidding thresholds, procurement card single transaction limits, and expenditure caps are made by statute. For Technical Colleges, these changes require approval of the State Board for Technical and Comprehensive Education ("State Tech. Board").

B. Technical Colleges May Seek $50,000 Increase in Procurement Certification (§ 11-15-1210): The Act authorized the State Tech. Board to increase a Technical College's procurement authority by a cumulative total of $50,000, subject to a favorable review by the Materials Management Office and a current procurement audit showing no material audit findings. Administratively, these grants of additional authority are effective upon issuance of a revised procurement certificate. Any such additional authority is subject to all other rules governing procurement certification. For example, certification is subject to use of statewide term contracts [R. 19-445.2020(B)(1)], may be suspended by a CPO [Regulation 19-445.2022], and may be removed by the Budget and Control Board.

C. Small Procurements (§ 11-15-1550): Colleges & Universities, and all Technical Colleges approved by the State Tech. Board, may make procurements up to $10,000 without competition or advertisement, provided the price is certified as fair and reasonable by the procurement officer. However, all other small purchase procedures apply. For example, procurement requirements may not be artificially divided so as to constitute a small purchase, and applicable statewide term contracts must be used, even for procurements beneath the $10,000 bidding threshold.

The following chart outlines the revised limits for small procurements, including construction:

Code Section	Procurement Method	All Agencies – Current Limits	Colleges & Universities – New Limits	Technical Colleges – New Limits	In-State Preferences / 11-35-1524
11-35-1550(2)(a)	Fair & Reasonable	Up to $2,500.00	Up to $10,000	Up to $10,000, if authorized by State Tech. Board. *[P-Card may be used for these transactions "up to the amount approved" by the Tech Board.]*	Inapplicable
11-35-1550(2)(b)	Written Quotes	$2,500.01 to $10,000.00	Inapplicable	Variable: applicable to purchases above amount authorized by State Tech. Board and less than $10,000.01.* *[P-Card may be used for these transactions "up to the amount approved" by the Tech Board.]*	Inapplicable
11-35-1550(2)(c)	Written Request for Quotations, advertised in SCBO	$10,000.01 to $50,000.00	$10,000.01 to $50,000.00	$10,000.01 to $50,000.00	Applicable

**Example: If the State Tech Board grants a college authority to use the "Fair and Reasonable" small purchase procedure up to $8,000, then the "Written Quotes" small purchase procedure would apply for that technical college to procurements of $8,000.01 to $10,000.*

D. Procurement Card Management: For Colleges & Universities, the Act authorizes each institution's governing board to approve increases in the single-transaction limits for their P-Cards, up to $10,000. For Technical Colleges, the Act authorizes the State Tech. Board to delegate administrative approval of increases in the single-transaction limits up to $10,000 to specific colleges. For both types of institutions, the level at which an individual organization is authorized to use its P-Card is not tied to the level at which that organization is authorized to use the "fair and reasonable" small purchase procedure; these limits may be set separately. More importantly, different single-transaction P-Card limits may be authorized for different individual users.

E. Changed Expenditure Caps on Indefinite Delivery Contracts (§ 11-35-3310): The Act increases the IDC expenditure caps for all Colleges & Universities and for all Technical

Colleges approved by the State Tech. Board. This change does not elevate the procurement certification for any Higher Education Institution. Please remember, all IDC contract awards must be approved by the State Engineer's Office. The maximum expenditure caps allowed by the Act are set forth in the tables below.

Construction IDCs - Summary of Change Chart

	Individual Project Cap	Total Expenditure in 2 years
Current Threshold	$150,000	$750,000
Colleges & Universities	$250,000	$1,000,000
Technical Colleges*	$250,000	$1,000,000

** Only applies to "technical college service contracts authorized by the" State Tech. Board. The State Tech. Board may elect to authorize a particular college to award all its Construction IDCs to that level. Alternatively, the State Tech. Board could elect to approve only categories of IDCs, or could elect to approve each contract.*

A/E IDCs - Summary of Change Chart

	Individual Project Cap	Total Expenditure in 2 years
Current Threshold	$100,000	$300,000
Colleges & Universities	$200,000	$500,000
Technical Colleges*	$200,000	$500,000

** Only applies to "technical college service contracts authorized by the" State Tech. Board. The State Tech. Board may elect to authorize a particular college to award all its A/E IDCs to that level. Alternatively, the State Tech. Board could elect to approve only categories of IDCs, or could elect to approve each contract.*

Small A/E IDCs[2] – Summary of Change Chart

	Individual Contract Cap	Total Expenditure in 2 years
Current Threshold	$25,000	$75,000
Colleges & Universities	$50,000	$150,000
Technical Colleges*	$50,000	$150,000

** Only applies to "technical college delivery contracts authorized by the" State Tech. Board. The State Tech. Board may elect to authorize a particular college to award all small A/E IDCs to this level. Alternatively, the State Tech. Board could elect to approve only categories of small A/E IDCs.*

F. Multi-State Cooperative Contracts (Article 19 of the Code): Provided a cost savings is demonstrated to the Office of State Procurement, the Act removes the requirements that thirty days notice of a proposed multi-state solicitation must be provided through central advertising and that such contracts may be only awarded to manufacturers who will be distributing the products to South Carolina governmental bodies through South Carolina vendors. All other requirements of Article 19 of the Consolidated Procurement Code still apply.

[2] Please note that while the Small Architect-Engineer limit increased for IDCs, the Act did not change the small Architect-Engineer procurement limits under SC Code Ann § 11-35-3230.