

# **SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION**

**GOODS AND SERVICES  
PROCUREMENT MANUAL**

**EXEMPT AND NON-EXEMPT  
OPERATIONAL PROCEDURES**

**VERSION 1.0**  
**DECEMBER 3,  
2019**

This document was developed as part of the continuing effort to provide guidance within the South Carolina Department of Transportation in fulfilling its mission to provide a safe, efficient, and sustainable transportation system through dedicated teamwork and responsible leadership supporting economic development, environmental sensitivity and improved quality of life. This document is not intended to establish policy within the Department, but to provide guidance in adhering to the policies of the Department.

Your comments, suggestions, and ideas for improvements are welcomed.

Please send comments to:

Chief Procurement Officer  
South Carolina Department of Transportation  
955 Park Street  
Columbia, South Carolina 29201

## **DISCLAIMER**

The South Carolina Department of Transportation maintains this printable document and is solely responsible for ensuring that it is equivalent to the approved Department guidelines. This document is not intended to establish policy within the Department, but to provide guidance in adhering to the policies of the Department. If, for any reason, any phrase, clause, sentence, paragraph, section, subsection, figure, table, or other part of this manual should be decided by a court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect the validity of these guidelines as a whole, or any part thereof, other than the part so held to be invalid.

## Manual Approvals

The purpose of this manual is to provide SCDOT staff with guidance and direction with regards to the procurement of exempt and non-exempt materials, goods and services. Any modifications to this manual require approval of the Secretary of Transportation and FHWA. This manual will be updated annually by the Chief Procurement Officer. However, SCDOT reserves the right to make interim updates to the procedures to address lessons learned, evolving approaches, updates to federal, state, local laws, regulations, and policies, provided those updates are reviewed with SCDOT and FHWA oversight.

Recommended By:



Chief Procurement Officer

1-29-2020

Date

SCDOT Deputy Secretary Concurrence:



Deputy Secretary for Engineering

1/29/2020

Date



Deputy Secretary for Finance and Administration

1/29/2020

Date



Deputy Secretary for Intermodal Planning

2/5/2020

Date



Secretary of Transportation  
SCDOT

2/5/2020

Date

Approved:

  
State Chief Procurement Officer  
SFAA

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## INTRODUCTION

This manual documents the procedures for the procurement of goods and services of the South Carolina Department of Transportation (hereinafter “SCDOT”). The purpose of the manual is to provide administrative control over procurement activities of the Department and to specify standard methods for carrying out these procurements. The procedures described herein are for use by all SCDOT personnel. Authority is vested upon the Procurement Director, Procurement Managers, and Procurement Specialists to administer these procurement procedures under the guidance of the Deputy Secretary of Finance and Administration. All SCDOT personnel are expected to adhere to all procedures. Any deviation will be considered an unauthorized procurement and must be ratified by the SCDOT’s Secretary of Transportation or Designee for procurements of \$100,000 or less. The appropriate State Chief Procurement Officer of the State Fiscal Accountability Authority (“SFAA”) must ratify any non-exempt procurement exceeding \$100,000.

This Manual is divided in 4 parts:

- PART 1 - OVERVIEW
- PART 2 - NON-EXEMPT PROCUREMENT
- PART 3 - OTHER NON EXEMPT PROVISIONS
- PART 4 – EXEMPT PROCUREMENTS

## BACKGROUND

The South Carolina Consolidated Procurement Code, S.C. Code Section 11-35-10. et seq. as amended, (hereinafter State Procurement Code), provides the procurement policies and procedures for every procurement or expenditure of funds by South Carolina under contract acting through a state agency irrespective of the source of funds, including federal assistance monies, except as specified in Section 11-35-40(3) (Compliance with Federal Requirements) and except that the State Procurement Code does not apply to gifts, grants, or to contracts between public procurement units, except as provided in 11-35-4610 (Intergovernmental Relations).

In 1981, pursuant to Act No. 148, the South Carolina General Assembly, through the Budget and Control Board (“Board”), now known as the SFAA, specifically exempted SCDOT from the State Procurement Code under Section S. C. Code Ann. §11-35-710(1). The exemption provides the following:

*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.*

The exemption applies regardless of the source of funds. Therefore, any bridge or highway construction or maintenance project funded by state or federal funding is exempt from the State Procurement Code and may be procured by SCDOT in-house pursuant to this exemption. For procurement of road and bridge contracts, SCDOT complies with Section 57-5-1620 and, if federal funding is involved, follows the procurement procedures set up under the federal guidelines. Federal regulations give specific guidelines as to how procurements of contracts funded with federal highway funds must be made and require close coordination with Federal Highway Administration (“FHWA”) [Construction contracts -23 CFR Part 635; Engineering and design-related service contracts - 23 CFR 172; and Design-build contracts -23 CFR 636].

All other contracts, outside of (1) bridge, highway construction or maintenance projects (2) vehicle and road equipment maintenance and repair, and (3) other emergency-type parts or equipment utilized by the Department of Transportation are subject to the State Procurement Code. This group includes supplies and equipment not falling within the §11-35-710(1) exemption above. These non-exempt procurements include goods and services, vertical building construction, and information technology. For non-exempt

procurements, SCDOT has been given certification authority from the SFAA, pursuant to S. C. Code Ann. Section 11-35-1210, to procure non-exempt contracts in-house up to certain dollar limits. To facilitate the procurement of both, these non-exempt contracts and exempt contracts, SCDOT has created this SCDOT Procurement Manual. The SCDOT Procurement Manual essentially mirrors the State Procurement Code for non-exempt procurement of goods and services and for exempt procurements adopts the procedures set forth in the Code.

This manual generally follows the South Carolina laws set forth under Section 11-35-10 et seq. and Title 57 of the South Carolina Code of Laws, 1976 as amended, and state regulations set forth under South Carolina Regulation 19-445.2000, et seq. and 63-10, et seq. Laws originate in the South Carolina General Assembly whereas regulations originate in administrative agencies and departments. Regulations are subordinate to the laws though they are enforceable just like laws. Regulations are introduced to help in the implementation of laws.

## ACRONYMS

CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprises
FHWA	Federal Highway Administration
FOIA	Freedom of Information Act
NIGP	National Institute of Governmental Purchasing
PM	Program Manager
PO	Procurement Officer
POC	Point of Contact
RCE	Resident Construction Engineer
RFP	Request for Proposals
RFQ	Request for Qualifications
ROW	Right-of-Way
SCBO	South Carolina Business Opportunities
SCDOT	South Carolina Department of Transportation
SFAA	State Fiscal Accountability Authority
SOQ	Statement of Qualifications
STIP	Statewide Transportation Improvement Program

## DEFINITIONS

**Agency** - South Carolina Department of Transportation

**Board** - The State Fiscal Accountability Authority.

**Bona fide** - written quote or bid with pricing. Oral quotes and no bids are not bona fide. The written quote or bid shall be signed by a person authorized to bind the vendor in contract.

**Business** - Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other legal entity.

**Business day** - means a day that is neither a Saturday, Sunday, nor a state or federal holiday

**Certification** - means the authority delegated by the board or the Director of the Division of Procurement Services to a governmental body to make direct procurements not under term contracts. Certification is granted pursuant to Section 11-35-1210 and R.19 445.2020.

**Change Order** - 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.

**Clarification** means any communication in which the responsible 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 an offer.

**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.

**Commercially Available off the Shelf** - 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.

**Communication** is an exchange that involves (i) information that is necessary to understand an offer, but that does not change any text or graphics in the offer, (ii) information about the offeror, or (iii) any other information that will not bind the parties upon acceptance of an offer.

**Competitive range** means typically not more than three offerors who have submitted the most promising offers and are selected for negotiation. Selection of one offeror or more than three offerors shall be documented.

**Construction** – for purposes of this Manual, construction refers to vertical building construction and not to the construction or maintenance of highway, road or bridges.

**Contract** - All types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.

**Contract Modification** - A written order signed by the procurement officer, directing the contractor to make changes as stated in the “changes clause” of the contract document.

**Contract Services Manager** - Works with all Department personnel in identifying areas where term contracts are in the best interest of the Agency. Reviews and writes specifications as necessary to process bid solicitations or request for proposals for term contracts to be bid. Provides Contract Administration for SCDOT term contracts. Maintains Agency contract information and supervises distribution to all Agency personnel. Maintains vendor complaint information on all term contracts. Supervises two subordinate employees assigned to the contract services section. Assist in field visits with Procurement Managers as necessary.

**Days** - Days means calendar days. In computing any period of time prescribed or allowed by the State Procurement Code or regulations, or order of the Procurement 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.

**Debarment** – means the disqualification of a person to receive invitation for bids, or request for proposals, or the award of a contract by a State, for a specified period of time commensurate with the seriousness of the offense or the failure of performance.

**Deficiency** means any term of an offer that does not conform to a material requirement of a solicitation. A material requirement is one that affects the price, quantity, quality, delivery, or other performance obligations of the contract.

**Department** - South Carolina Department of Transportation

**Deputy Secretary for Finance and Administration** - The Department employee assigned the responsibility of managing the financial and procurement offices that provides support to the entire Department, to include the offices of the Chief Financial Officer, Chief Procurement Officer, Contract Assurance, Financial Planning, and Information Technology.

**Designee** - Any specified Department employee acting on behalf of another Department employee within the SCDOT.

**Facility Construction** – capital improvements to SCDOT owned buildings.

**Field Buyers** – Department employee responsible for the purchasing of goods and services within their certification for a specific county or Engineering District. These employees do not report to Procurement, but have oversight by District Engineering Administrators (DEAs) or Resident Maintenance Engineers (RMEs).

**Grant** - The furnishing by the State or the United States government of assistance, whether financial or otherwise, to any 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 or construction. A contract resulting from such an award shall not be deemed a grant but a procurement contract.

**Information Technology Services Director** - The Department employee that reports to the Deputy Secretary for Finance and Administration and is assigned the responsibility of managing the Department's Information Technology programs and operations.

**Materials Management Office** – An office under the State Fiscal Accountability Authority (SFAA) that is responsible for direction, management, and oversight of the non-exempt procurement and related activities.

**Materials Management Officer** - The State Fiscal Accountability Authority (SFAA) employee to whom responsibility is delegated for administering the functions, duties, and activities of the Materials Management Office.

**Negotiation** means any communication, oral or written, that invites or permits an offeror to change any texts or graphics in the terms of its offer in any way. Negotiation does not include communication. Negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract

**Offer** means those portions of a proposal that constitute a written promise or set of promises to act or refrain from acting in a specified way, so made as to manifest a

commitment to be bound by those promises upon acceptance by the State. Offer does not include mere descriptions of approaches, plans, intentions, opinions, predictions, or estimates; statements that describe the offeror's organization or capability; or any other statements that do not make a definite and firm commitment to act or refrain from acting in a specified way.

**OSE** - Office of the State Engineer for the State Fiscal Accountability Authority (SFAA).

**Person** – means any business, individual, union, committee, club, other organization, or group of individual.

**Procurement** - The buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services using public funds (state or federal). It also includes all functions that pertain to the obtaining of any supply and service. It includes the description of requirements, determining the method of source selection and solicitation of requirements, preparation and award of contracts, and all phases of contract administration.

**Procurement Director** – See Roles Section

**Procurement Managers I** (Buyers) - See Role section

**Procurement Manager II** - See Role section

**Procurement Specialists I** - See Role section.

**Procurement Specialist II** - See Role section

**Proposal** means the information submitted to the State in response to a request for proposals. The information in a proposal includes (i) the offer, (ii) information explaining the offer, (iii) information about the offeror, and (iv) any other information that is relevant to source selection decision making.

**Qualified Source** - An offeror which in the normal course of business can be expected to provide the goods and/or services requested. (For example: A supplier of steel H-beams would not normally be expected to supply wooden poles.)

**Register of Proposals** – A document prepared after receipt of proposals which includes the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register shall be certified in writing as true and accurate by both the person opening the proposals and the witness and is open to public inspection only after issuance of an award or notification of intent to award, whichever is earlier.

**Requester** - Any individual who initiates a shopping cart, or makes a request to procure a commodity or service.

**Responsible Bidder or Offeror** - Any person or firm who has the capability in all respects to perform the contract requirements, and has the integrity and reliability that will assure good faith performance. This may be substantiated by past performance. Reg. 19-445.2125.

**Responsible Procurement Officer** - means the individual employed by either the purchasing agency or the chief procurement officers, as applicable, assigned to serve as the procurement officer, as defined in Section 11-35-310, responsible for administering the procurement process. Typically, the responsible procurement officer will be identified by name in the solicitation, as amended, and any subsequent contracts, as amended.

**Responsive Bidder or Offeror** - Any person or business who has submitted a bid or offer that conforms in all material aspects to the invitation for bids, quotations, or request for proposals as it relates to price, quantity, performance, and delivery.

**SCDOT Chief Procurement Officer** - The individual that reports to the Deputy Secretary for Finance and Administration who is responsible for Procurement Departments for Commodities and Services, Professional Services Contracting, and Project Delivery.

**Scope of Work** – sets the standard against which the work will be measured. Needs to be detailed and answer who, what, when, why, where and how. Scope of work must be non-restrictive.

**Selection Executive (SE)** – an individual appointed in writing for each competitive negotiation by the using agency who has sufficient rank and professional experience to effectively carry out the process of competitive negotiations under 11-35-1535. The SE recommends an acquisition team which is tailored for the particular acquisition.

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

**South Carolina Business Opportunities** - The official State daily publication announcing proposed procurements and other procurement information of interest to the business community. This publication is offered through the Internet at <http://procurement.sc.gov/PS/general/scbo/PS-scbo-online.phtm>. All Procurements, except vehicle repairs, over \$25,000 must be advertised in this publication.

**State** - Material Management Office (MMO) of SFAA or Information Technology Management Office (ITMO) of SFAA.

**State Government Accountability and Reform Act of 1993** - It is the intent of the General Assembly to ensure that the heads of State Agencies, Departments, and Institutions are held accountable for the effective and efficient use of the public resources entrusted to them annually in the appropriation process. Each Agency, Department, or Institution head is expected to have in place an effective system of management controls to prevent and detect improper conduct by their employees. In the event of mismanagement, waste, or abuse allowed by an Agency, Department or Institution Head, the Governor, Constitutional Officer, or Governing Board is expected to take swift and appropriate action to correct the matter and regain the public trust.

**State Engineer** - The individual holding the position of State Chief Procurement Officer for the Office of the State Engineer. This is not the SCDOT's Highway Engineer.

**Subcontractor** - A 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 to perform work or provide services.

**Supplies** - All personal property, including but not limited to equipment, materials, printing, insurance, and leases of real property; excluding real property or an interest in real property other than leasehold interests.

**Suspension/Debarment** - The disqualification of a person to receive invitations for bids, request for proposals, or be awarded 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.

**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.

**Term Contract** - means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time. As provided in the solicitation, if SCDOT 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. The non-contract vendor must agree to the terms and conditions of the contract in order for SCDOT to purchase from said vendor. If the vendor holding the term contract meets the lower price, then SCDOT 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 multi-term contract.

**Unauthorized Procurements** - An act that obligates the State in a contract made by any person without a requisite authority to do so, by appointment or delegation. Purchases that may be considered to be unauthorized are not limited to, but shall include, the following:

- a. Purchasing items that are on State or Agency Contract from a vendor who does not have the contract.
- b. Receiving goods or services without obtaining an authorized number such as a Purchase Order Number, or a Procurement Card number in advance of making the procurement.
- c. Exceeding the limit of delegated procurement authority.
- d. Not obtaining the proper level of competition for procurements, such as informal written quotes, formal written quotes, or sealed bids.
- e. Not adhering to the requirements of the State Procurement Code and ensuing regulations.
- f. Not adhering to the requirements for exempt procurements.

**Weakness** means a flaw in the proposal that increases the risk of unsuccessful contract performance. A “significant weakness” in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

# PART 1 – OVERVIEW

## CHAPTER 1. PURPOSE AND PROCEDURAL REQUIREMENTS FOR BOTH EXEMPT AND NON-EXEMPT PROCUREMENTS

### 1.1 Purpose

The purpose of the SCDOT Procurement Office is to promote fair and open competition while providing quality goods and services at the best overall cost to support the mission of SCDOT.

#### **1.1.1 Procurement Office**

The Procurement Office of the South Carolina Department of Transportation (Department) is authorized by South Carolina State law to purchase materials, supplies, and services for the various divisions of the Department. These divisions are comprised of approximately 5,190 employees statewide.

The Procurement Office was established by the Secretary of Transportation under authority of section 57-3-10 of the 1976 code of laws, as amended, as a part of the Division of Finance and Administration. This Office is necessary in order to carry out the mandated responsibilities of the Division of Finance and Administration under section 57-3-20 of the 1976 code of laws, as amended. The authority for the Department to enter into contracts as may be necessary for the proper discharge of its functions and duties was given in section 57-3-110. The procurement method for goods and services shall follow the State procurement code for non-exempt procurements. The procurement method for goods and services exempted from the state procurement code shall follow the procedure set forth herein.

#### **1.1.2 Purpose Of Procurement Program**

The purpose of the procurement program is to provide the South Carolina Department of Transportation with the most competent, receptive personnel, to maintain a uniformly high level of specialized knowledge and skill in procurement administration. This ensures funds are expended in the most economical manner while maintaining accountability and integrity. The underlying purpose and policies are:

- a. to provide increased economy in procurement activities for the agency and to maximize the value of funds while ensuring that procurements are conducted in the most advantageous manner and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;
- b. to foster broad based competition for public procurement within the free enterprise system;

- c. to develop procurement capability to ensure responsiveness to user needs;
- d. to strive to consolidate, clarify, and modernize the law governing procurement in the State and permit the continued development of explicit and thoroughly considered procurement policies and practices;
- e. to support the requirement of competitive procurement laws and practices by agencies 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 procurements;
- 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 individuals involved in procurement processes of the agency.

## **1.2 Requirements and Procedures**

### **1.2.1 Compliance with Federal Requirements**

Where a procurement involves the expenditure of federal assistance, grant, or contract funds, SCDOT shall comply with federal laws (including authorized regulations) as are mandatorily applicable and which are not presently reflected in the State Procurement Code. Notwithstanding, where federal assistance, grant, or contract funds are used in a procurement by SCDOT, including any requirements that are more restrictive than federal requirements, must be followed, except to the extent such action would render SCDOT 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 the State Procurement Code.

Failure to comply with federal laws (including authorized regulations) as are mandatorily applicable to the procurement and which are not within the State Procurement Code, is not subject to review under the Protest Process of the State Procurement Code.

### **1.2.2 Ethical Standards**

The South Carolina Department of Transportation believes in maintaining the highest level of integrity found within procurement programs and supports those practices of the National Institute of Governmental Purchasing (NIGP) Code of

Ethics. All employees involved in procurement activities must adhere to the Code of Ethics of the NIGP as adopted by SCDOT, and stated herein:

- a. Seeks or accepts a position as head or employee only when fully in accord with the professional principles applicable thereto, and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization;
- b. Believes in the dignity and worth of the service rendered by the organization and the societal responsibilities assumed as a trusted public servant;
- c. Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served;
- d. Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable;
- e. Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved;
- f. Believes that members of the Institute and its staff should at no time under any circumstances accept directly or indirectly, gifts, gratuities, or other things of value from suppliers which might influence or appear to influence procurement decisions;
- g. Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts;
- h. Resists encroachment on control of personnel in order to preserve integrity as a professional manager; Handles all personnel matters on a merit basis.
- i. Politics, religion, ethnicity, gender and age carry no weight in personnel administration in the agency being directed or served;
- j. Seeks to dispense no personal favors.
- k. Handles each administrative problem objectively and emphatically without discrimination;
- l. Subscribes to and supports the professional aims and objectives of the NIGP.

### **1.2.3 South Carolina State Ethics Act**

The State Ethics, Government Accountability, and Campaign Reform Act was enacted October 1991 to restore public trust in governmental institutions and the political governmental processes.

The State Ethics Act applies to all public officials, public employees, and public members of the State and political sub divisions, with the exception of members of the judiciary, probate judges, candidates for public office; and the law also covers committees or groups working on behalf of candidates.

### **1.2.4 SCDOT Past Employment Policy**

To avoid the appearance of any real or perceived favoritism, unfair advantage, undue influence, or conflict of interest, an offer/proposal/statement of qualifications (SOQ) will be disqualified if it names, identifies, or includes in any way a current or former SCDOT employee serving in a management level position within 365 days of the submittal. No communication or appearance shall be made by such a current or former employee with SCDOT on such SOQ, or the SOQ will be disqualified. In addition, no current or former employee, who served in a management level position or above, may work on or invoice for services performed on a project within 365 days after their last day of employment with SCDOT. For the purposes of this bright line rule, "management level position" is defined as any SCDOT Pay Band 7 and above position, which includes, but is not limited to, Directors, Assistant Directors, District Engineering Administrators, District-level Engineers, Program Managers, Assistant Program Managers and Resident-level Engineers.

### **1.2.5 Prohibition of Service by SCDOT Commissioner**

S. C. Code Section 57-1-350(G) prohibits a member of the SCDOT Commission service on July 1, 2017 (the effective date of the Act) or thereafter, from having an interest, direct or indirect, in any contract awarded by SCDOT during the member's term of appointment and for one year after the termination of the appointment.

Therefore, any proposal or bid submitted to SCDOT in violation of this law will be disqualified.

### **1.2.6 Drug Free Workplace Act**

The State of South Carolina has amended Title 44, Code of Laws of South Carolina, 1976, relating to health by adding Chapter 107, so as to enact the Drug Free Workplace Act (DFWA). This Act went into effect on January 1, 1992, and it requires the vendors to certify to SCDOT that on all contracts of \$50,000 or more they will comply with the Act and provide a Drug Free Workplace for their employees. In order to implement this Act, a clause is included in all solicitations

in excess of \$50,000 that gives a brief explanation of the Act. For Emergency and Sole Source procurements a separate form will be sent to the vendor. No work will commence until a DFWA certification is obtained from the vendor.

### **1.2.7 Assistance to Minority-Owned Businesses (Reg 19-445.2160)**

SCDOT, in an effort to assist Minority-Businesses Enterprises (MBE), has developed the below SCDOT MBE Utilization Plan which affords those qualified MBEs the opportunity to fully participate in the overall procurement process of SCDOT. SCDOT's MBE Utilization Plan is on file at the SCDOT Procurement Office. As required by Section 11-35-5210, et seq., the SCDOT Minority & Small Business Affairs (MSBA) Office will report quarterly those expenditures made to MBEs by the first and no later than the fifteenth of each month after each quarter

#### **1.2.7.1 SCDOT Minority Business Plan**

The Director of Procurement shall develop and send the SCDOT's Minority Business Utilization Plan to the S.C. Division of Small and Minority Business Contracting and Certification (SMBCC) Office for approval by July 30<sup>th</sup> annually and no later than 30 days after each reporting quarter. The report is also forwarded to the SCDOT MSBA Office. All reports, supporting documents, and the MBE Plan are on file in the Procurement Office for review. For non-exempt procurements, the MBE plan calls for a ten percent utilization of controllable dollars.

#### **1.2.7.2 Disadvantaged Business Enterprise Program**

For exempt and non-exempt goods and service contracts funded by federal funds, SCDOT's DBE Program is designed to increase the participation of minority and women owned businesses in the SCDOT's procurement activities as regulated by 49 Code of Federal Regulations, Parts 23 and 26. For example the SPR contracts. SCDOT certifies the eligibility of disadvantaged firms for participation as DBE subcontractors on selected federal-aid projects daily. This program ensures that a percentage of contract dollars are committed to certified DBEs on federal-aid projects.

For non-federally funded, exempt projects, SCDOT implements a competitive State Set-Aside Program whereby projects are reserved specifically to be bid by firms certified as DBE by SCDOT (minority & women owned firms) as needed to assure the minority participation goal as stated in the SCDOT's MBE Plan is met. The set aside process cannot be used on federally funded projects as set forth under 49 CFR Part 26, which specifically provides that the DBE program is not a quota or set-aside program, and it is not intended to operate as one.

### **1.2.7.3        Process**

For non-exempt procurement, prior to the solicitation being published, the SCDOT Minority & Small Business Affairs (MSBA) Office will review and determine if the solicitation should be advertised a “set aside”. After the solicitation is published on SCEIS, the Procurement Officer shall forward the solicitation to the SCDOT Division of MSBA. The Division of MSBA may contact potential minority business vendors/offerors/proposers who may be interested in the solicitation. For purchases under \$10,000, the field buyer may send out the request for quote to potential minority business vendors/offerors.

For exempt procurements, Procurement Office contacts SCDOT Division of MSBA to coordinate.

### **1.2.8    Retention of Records**

All procurement records shall be retained and disposed of in accordance with Archives and History schedules. All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt thereof.

Records to be retained consist of correspondence, commission reports, contractor's bonds, specifications, bid notice and statement of award, requisitions, purchase orders, equipment transfers, equipment sold, vendor codes, catalogs, mailing lists for junk sales, and any other documents which are considered back up information for these record files.

Record Series Retention/Disposition Schedules are on file with the S.C. Department of Archives and History. Office for each of the above referenced files, in the General Records Retention Schedule for Administrative Records of State Agencies, found at  
[https://scdah.sc.gov/sites/default/files/Documents/Records%20Management%20\(RM\)/Schedules/admin.pdf](https://scdah.sc.gov/sites/default/files/Documents/Records%20Management%20(RM)/Schedules/admin.pdf)

### **1.2.9    Freedom of Information Requests**

All Freedom of Information (FOIA) requests must be sent to the FOIA Officer in the SCDOT Office of Chief Counsel.

SCDOT, with the approval of State CPO, may keep portions of a non-exempt solicitation confidential and release the information to prospective offerors only upon execution of a nondisclosure agreement (NDA), provided the information is otherwise exempted from disclosure by law.

For non-exempt procurements, 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.”

#### **1.2.10 Suspension and Debarment**

- a. For Non-exempt procurements.
  1. Section 11-35-4220 provides that the appropriate CPO 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 CPO.
  2. Causes for debarment are listed in Section 11-35-4220
  3. The procedures and policies set forth in Section 11-35-4220 of the Procurement Code shall apply to the disposal of State property. The authority to debar a person from participation in the public sales of State-owned property shall rest with the Materials Management Officer. Reg. 19-445.2150.
  4. If a contract is awarded to a bidder that received the award as a result of the South Carolina end product or United States end product preference, the contractor may not substitute a non-qualifying end product for a qualified end product. A substitution in violation of this item is grounds for debarment pursuant to Section 11-35-4220.
  5. The CPOs shall maintain and update a list of debarred and suspended persons, and shall make the list publicly available.
- b. For Exempt Procurements.
  1. Follow SC Regulation 63-304 to 63-306 for suspension and debarment process, along with Federal laws and regulation set forth under FHWA Form 1273.
  2. If an entity or person is suspended or debarred by the federal government, they will not be able to participate in new procurements. If they are suspended or debar by MMO, they will not be able to participate in either federal or state funded projects.

#### **1.2.11 Determination and Reports**

The following written determinations will be required:

- a. Section 11-35-1520 (Correction or withdrawal of bids; cancellation of awards.) Awards may be cancelled prior to performance when supported by a

- written determination of appropriateness by the State Chief Procurement Officers or the head of the procurement Agency.
- b. Section 11-35-1530 (Competitive sealed proposals - conditions for use.) When a procurement agency determines in writing that use of a competitive sealed proposal is the appropriate method of procurement.
  - c. Section 11-35-1540 (Negotiations after unsuccessful competitive sealed bidding.) A written determination by the head of the Agency or their designee stating that the bids received were unreasonable or exceed funds available and time will not allow for a re-solicitation.
  - d. Section 11-35-1810 (Determination of responsibility.) When it has been determined that a bidder or offeror is non-responsible a written determination of non-responsibility shall be issued and sent to the bidder or offeror as soon as practical with details of their being determined to be non-responsible. Reg. 19-445.2125
  - e. Section 11-35-2030 (Multi-term contracts and determination prior to use.) When the agency determines that a multi-term contract is the appropriate contract type, a written determination shall be completed documenting the circumstances requiring the initial term of the contract to be longer than one year.

### **1.2.12 Unauthorized Procurements**

Any persons obligating the State in a contract without said authority to do so, by appointment or delegation, can be held liable for the unreasonable price difference paid.

- a. Upon finding after award that a State employee has made an unauthorized award of a contract or that a contract award is otherwise in violation of the law, the appropriate official may ratify or affirm the contract or terminate it in accordance with this section. The contract may be terminated and reasonable termination costs, if any, may be awarded as provided in this section. The contract may be ratified and affirmed only if it is in the best interests of the State. The decision required by this paragraph may be made by the State Chief Procurement Officer, the Secretary of Transportation, or a designee of either officer above the level of the person responsible for the person committing the act. If the value of the contract exceeds one hundred thousand dollars, the State Chief Procurement Officer must concur in the written determination before any action is taken on the decision.
- b. All decisions to ratify or terminate a contract shall be supported by a written determination of appropriateness. In addition, the appropriate official shall prepare a written determination as to the facts and circumstances surrounding the act, what corrective action is being taken to prevent recurrence, and the action taken against the individual committing the act. Any governmental body shall submit quarterly a record listing of all decisions to the State Chief Procurement Officers. A copy of the record shall be submitted to the Board on an annual basis and shall be available for public inspection.

- c. Except as provided in paragraph d, if a contract is terminated pursuant to paragraph a, the State shall, where possible and by agreement with the supplier, return the supplies delivered for a refund at no cost to the State or at a minimal restocking charge. If a termination claim is made, settlement shall be made in accordance with the contract. If there are no applicable termination provisions in the contract, settlement shall be made on the basis of actual costs directly or indirectly allocable to the contract through the time of termination. Such costs shall be established in accordance with generally accepted accounting principles. Profit shall be proportionate only to the performance completed up to the time of termination and shall be based on projected gain or loss on the contract as though performance were completed. Anticipated profits are not allowed.
- d. Upon finding after award that an award is in violation of law and that the recipient of the contract acted fraudulently or in bad faith, the appropriate State Chief Procurement Officer shall declare the contract null and void unless it is determined in writing that there is a continuing need for the supplies, services, information technology, or vertical building construction under the contract and either (i) there is no time to re-award the contract under emergency procedures or otherwise; or (ii) the contract is being performed for less than it could be otherwise performed.

#### **1.2.12.1        Written determination of unauthorized procurements**

In either case referred to in item a and b above, the appropriate Division Head, District Engineer Administrator or their designee shall prepare a written determination of the facts and circumstances surrounding the act, including actions to prevent it from occurring again, and disciplinary action taken against the individual who made the unauthorized procurement, and shall forward to the Director of Procurement for review and submission to the Secretary of Transportation, or the Materials Management Office for ratification.

#### **1.2.12.2        Ratification of unauthorized procurements (Reg 19-445.2015)**

Ratification of acts in excess of the Agency's certification limit of Procurement Authority must be ratified, when in the best interest of the state, by the Board office.

- a. Under \$100,000 – End user shall obtain ratification from their management, at least 2 levels up plus the appropriate Deputy Secretary. A written determination shall be prepared. The end user could lose ability to be a buyer.
- b. Over \$100,000 EXEMPT – All criteria under paragraph (a) above apply in addition to the concurrence of the SCDOT Chief Procurement Officer (CPO). End user may be subject to disciplinary action, the level of which is at the discretion of the respective Division or District.
- c. Over \$100,000 NON-EXEMPT – All criteria under paragraphs (a) and (b) apply in addition to the concurrence of the State Chief Procurement Officer. End user may be subject to disciplinary action, the level of which is at the discretion of the respective Division or District.

Any unauthorized procurement committed by an employee will be considered an employee disciplinary matter with corrective disciplinary actions administered by the respective Division or District.

A summation of facts surrounding the purchase shall be made not later than 20 days after the Division of Procurement has made such a determination. This summation shall be submitted to the Director of Procurement for Commodities and Services for review and submitted to the Secretary of Transportation for ratification.

All unauthorized procurements must be reported to SFAA Division of Procurement Services quarterly.

#### **1.2.12.3 Examples of unauthorized procurements:**

- a. Splitting orders - Procurement requirements must not be artificially divided so as to constitute a small purchase or avoid securing the appropriate level of competition. A combination of procurement methods such as multiple procurement cards and shopping carts used to circumvent the need for competition.
- b. Revolving Accounts - Accounts that maintain a balance to be paid incrementally) cannot be established. Such activities will be considered unauthorized and disciplinary action may be taken.
- c. Purchasing items from vendors who do not have state contract
- d. Receiving goods or services without having a PO in advance
- e. Not obtaining appropriate competition
- f. Exceeding certification limit
- g. Signing a contract or agreement without authority – All contracts and agreement must be signed by the Procurement Office.

#### **1.2.13 Determination File**

Written determinations and findings required by the Code in Section 11-35-2410 shall be retained and filed in the appropriate contract files as documentation relating to the contract, and shall be sufficient in detail to satisfy audit requirements.

#### **1.2.14 Designated Management Approval**

Each Division has the flexibility to determine approval signature authority at various levels of management for their organizations. This signature authority is documented through the SCEIS Organizational Structure.

The authorized signatures on shopping carts and purchase orders are to be electronic and are to be the person who is authorized and listed in the security table through SCEIS which is maintained by the Procurement Office. The Submit function operates as the authorized signature in SCEIS. Procurement card receipts are to be original signatures of the person who is authorized as stated on

the front of the card. Only full signatures shall be used on Procurement Card receipts, no initials will be allowed. For shopping carts and purchase orders, they must follow the Purchase Order Release Strategy set up in SCEIS. If a Deputy Secretary, Director, Division Head, Sub-Division Head, District Engineer Administrator, or Manager has delegated the authority to sign on his/her behalf, the Organizational Structure must be updated to reflect this delegation of authority. The individual who has been delegated the authority shall electronically approve the shopping cart or Purchase Order. Delegated authority cannot be granted for Procurement Card receipts. The individual who has been issued the Procurement Card must sign all receipts.

When signature authority has been delegated, it must be approved by the Deputy Secretary, District Engineer Administrator, or Division Head and processed through SCEIS using a SCEIS User Access Request form by the Procurement Director for Commodities and Services.

The Director of Maintenance or his designee must approve the following purchases: all herbicides, fixed asset equipment, and any requisition that is charging the procurement against an account other than the requestor's budget allotment for Maintenance.

#### **1.2.15 Expenditure Of Funds**

The policies and procedures in this manual are in compliance with the State Procurement Code and State Government Accountability and Reform Act of 1993 and apply to all funds (County, State, Federal, and other) for the purchase of goods, services, vertical building construction, consultant services, and information technology.

#### **1.2.16 Conflict of Interest (19-445.2127)**

- a. Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the SCDOT, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- b. Vendors/offerors who assist the owner in the preparation of a solicitation document will not be allowed to participate as a vendor/offeror or join a team submitting a proposal in response to the solicitation. However, SCDOT may determine there is not an organizational conflict of interest for a vendor/offeror where:
  1. The role of the vendor/offeror was limited to provision of preliminary design, services, reports, or similar "low-level" documents that will be incorporated into the solicitation, and did not include assistance in development of the solicitation or evaluation criteria, or

2. Where all documents and reports delivered to SCDOT by the vendor/offeror are made available to all vendors/offerors.
3. Vendors/offerors who identify any person or entity who has an organizational conflict and/or has performed, is performing, or will perform certain services pertaining to the solicitation, and wish to identify them to participate on the solicitation shall:
  - i. Disclose all work performed in relation to the solicitation and describe in detail the organizational conflict to the Procurement Officer. Disclosure includes providing all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest. Vendors/offerors shall state how its interests or those of its chief executives, directors, Key Individuals for the solicitation, or any proposed vendor/offeror may result, or could be viewed as an organizational conflict of interest;
  - ii. Provide all records of such work to SCDOT so that all such information can be made available to all potential vendors/offerors, if necessary;
  - iii. Ensure that the person's or entity's contract with SCDOT or any related entity to perform service related to the solicitation has expired or has been terminated prior to release of the solicitation;
  - iv. In cases where the person or entity is identified as a Key Individual on more than one vendor/offeror's team for the solicitation, Proposer shall describe how the person or entity will avoid conflicts in the bid phase of the solicitation.
  - v. Comply with all federal and state conflict of interest rules and regulations.
- c. Vendor/offeror agrees that, if an organizational conflict of interest is discovered after the response to the solicitation is submitted, vendor/offeror must make an immediate and full disclosure to Procurement Officer that includes a description of the action that the vendor/offeror has taken or proposes to take to avoid or mitigate such conflict. If after award of the contract an organizational conflict of interest is determined to exist, SCDOT may, at its discretion, terminate the contract for the solicitation. If the vendor/offeror was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to SCDOT, then SCDOT may terminate the contract for default.

#### **1.2.17 Contracting For Legal Services**

All request for contracting legal services shall be directed to the Legal Office. Contracting for Legal Services shall be performed in accordance with Section 57-1-440, 1-7-160, 1-7-170 and 11-35-1260 of the South Carolina Code of Laws and SC Regulation 19-445.2025.

### **1.2.18 Documents in Procurement File**

Generally, all Solicitation Files on the shared Procurement (“J”) drive should have the following file structure:

- a. **Solicitation**
  - 1. Requisition & Original Specification
  - 2. SLAs & Revisions
  - 3. D & F (Determinations & Findings)
  - 4. Correspondence
  - 5. Public Meetings
  - 6. Q & A
  - 7. Web Documents
  - 8. Protest Documents
- b. **Evaluation**
  - 1. Solicitation Receipt Log
  - 2. Correspondence
  - 3. Solicitation Responses
  - 4. Public Meetings
  - 5. Reference Checks
  - 6. Financial Analysis
  - 7. Tabulation, Scoring, & Summary
  - 8. Negotiations
  - 9. D & F
  - 10. Award
  - 11. Protest Documents
  - 12. Approvals (if applicable)
- c. **Contract**
  - 1. Change Orders
  - 2. Contract Modifications/Amendments
  - 3. Non-Compliance Notices
  - 4. Failure to Perform Items
  - 5. Correspondence
  - 6. Cure Letters
  - 7. Cancellations
  - 8. Assignments
  - 9. Qualification Documents
  - 10. Insurance & Bonds
- d. **FOIA**

### **1.2.19 Debriefings**

Debriefing meetings are informal one-on-one meetings that provide feedback to vendors/offerors. Debriefing meetings should also be used to obtain feedback from the vendors/offerors on the procurement process. Debriefings shall not be used to justify the scoring or argue disputes in the evaluation. Debriefings are to assist the vendor/offeror in its capacity of submitting better proposals for future procurements.

All unsuccessful vendors/offerors have an opportunity for a debriefing meeting after execution of the contract. However, no team should be debriefed if any team protests or takes legal action against the procurement. If this occurs, debriefings should be delayed until the conclusion of the protest or legal process.

Any vendor/offeror may request a debriefing by submitting a written request by letter or email to the Procurement Officer. All requests for debriefings must be received within three (3) days from posting the notice of intent to award. The Procurement Officer will send the Vendor/offeror an acknowledgement of the receipt of the request along with an advisement that the debriefing meeting will be scheduled after the protest period has expired. Once the protest period has ended, the Procurement Officer will contact the vendor/offeror requesting the debriefing to coordinate and schedule the meeting. Debriefings can be conducted either through face-to-face meetings or via conference call.

#### **1.2.19.1 Debriefing Process**

Listed below are processes and procedures for debriefing meetings:

- a. The PO will be responsible for organizing and facilitating debriefing meetings;
- b. The PO is responsible sending a written acknowledgement to the Protestor of receipt of request for protest and advising of protest period possible delay.
- c. The PO should attend all debrief meetings. On full federal oversight projects, the PO will offer FHWA the opportunity to attend the debriefing meetings;
- d. Debrief meeting should be conducted as follows:
  1. Approximately one hour in length, unless otherwise specified by the Procurement Officer
  2. An informal discussion between SCOTD and the vendor/offeror
  3. A review of the Evaluation Committee's comments;
  4. A scoring breakdown by category;
  5. Feedback on the procurement process;
  6. Do not discuss the contents of another team's SOQ.
- e. The PO shall include a summary of the debriefing in the procurement file. The summary shall include the attendees, topics discussed; any questions and answer; and any lessons learned.

#### **1.2.20 Documentation of Approvals**

If approvals are required at any stage of the procurement process, the procurement officer shall obtain written documentation of the approval and file it in the procurement file on the J Drive.

### **1.2.21 Vendor's Visiting Hours**

Vendors will be seen by appointment and shall sign in at the desk in the lobby. If there is an immediate need by the Director of Procurement for Commodities and Services, the Procurement Managers, or the vendor to see one another, appointments may be made by walk-ins during normal working hours of 8:30 AM to 5:00 PM. This will assure the vendor of quality time and will allow the staff to have more uninterrupted time to perform the functions of their job duties.

## CHAPTER 2: TRAINING AND ROLES

### 2.1 Required training as follows:

All Procurement Officers are required to take the following courses:

- a. Procurement Policies and Procedures class – in person or on-line, when available. immediate
- b. SCEIS SRM200U - link to SCEIS central – under My Talent section – within 30 days - it is available on- line
- c. SCEIS PR101V - within 30 days. It is available on-line.
- d. SCEIS PR217 - (perquisite is PR101V)
- e. Procurement Manager - requires SCEIS Managing Contracts Class PR 260

### 2.2 Roles in Office of Procurement.

#### 2.2.1 SCDOT Chief Procurement Officer (CPO) -

The SCDOT Chief Procurement Officer reports to the Director of Finance and Administration and is responsible for all procurement and contracting by the SCDOT.

#### 2.2.2 Procurement Officer for Commodities & Services Contracts – (Procurement Director)

The Procurement Director reports to the SCDOT Chief Procurement Officer and is responsible for administering the requirements:

- a. For Non-Exempt Procurements under the State Procurement Code in the acquisition of goods, services not to exceed \$1,000,000 for supplies, \$500,000 for services, \$100,000 for information technology, \$500,000 for vertical building construction services. Authority is limited to the Procurement Services staff at Headquarters on 955 Park Street Columbia SC. Other procurements conducted by Field Buyers are limited to \$25,000 in all categories.
- b. For Exempt Procurements of goods and services under 11-35-710.
- c. The Procurement Director plans, directs and supervises the procurement of a wide variety of technical and non-technical equipment, supplies and services. This encompasses the review of shopping carts; supervising the securing of quotations and signing of purchase orders over \$25,000; correspondence with suppliers; supervising the expediting of purchases; counsels Procurement Managers and Procurement Specialists; supervises clerical and procurement information technology staff; supervises the preparation of sole source, emergency, trade-in, and minority reports. The Procurement Director participates in field visits for the review of processes and public relation purposes.

- d. Develops and delivers training for new procurement personnel both in Headquarters and in the field.

#### **2.2.2 Procurement Manager I (for Buyers)**

Employee of the Department that reports to the SCDOT's Procurement Manager II. Reviews requisitions; determines source selection and secures proper competition through formal or informal price quotes, written quotes, or sealed bids. Makes awards and prepares requisitions for the issuance of purchase orders; expedites deliveries; reviews invoices where problems are discovered between invoice and purchase order. Corresponds with suppliers and develops good relationships with suppliers and Departmental officials. Supervises the field locations in their delegated procurement authority of \$25,000 to include field visits and management reviews of work completed by the field and perform related duties as the need arises. **This authority can be revoked for frequent and/or flagrant policy violations.**

#### **2.2.3 Procurement Manager II**

Employee of the Department that reports to the SCDOT's Procurement Director. Supervises Manager I, Procurement Manager II, supervises the day-to-day function of the Procurement Office buying staff for Districts and Headquarters in Columbia; trains new buyers on procedures and processes for procurements in excess of \$10,000, and supervises the monitoring of procurements under \$25,000 at the district level. Training includes all technical and procurement systems training. The Procurement Services Manager works closely with and the Procurement Director to recommend procedure changes, delegation of workflow as necessary, and updating on staff performance. Recommends standardization of processes and develops documentation of standardized procedures. **This authority can be revoked for frequent and/or flagrant policy violations.**

#### **2.2.4 Procurement Specialist I (Headquarters)**

Employee of the Department that reports to the SCDOT's Procurement Director. Procurement Specialist I prepares general correspondence for Procurement Director as directed. Receives and directs visitors; receives and directs phone calls; prepares reports; and opens and distributes mail; and performs related duties as they arise. Oversees all bid openings.

#### **2.2.5 Procurement Specialist II (Headquarters)**

Employee of the Department that reports to a Procurement Manager. Assigned specialized tasks for procurement and contract administration (i.e. sole source procurements)

#### **2.2.8 Selection Executive (SE) for Competitive Negotiations**

For each competitive negotiation the head of the using agency or his designee must appoint in writing an individual to serve as the selection executive (SE). The SE must be an individual who has sufficient rank and professional experience to

effectively carry out the functions of an SE. Subject to the authority and approval of the responsible procurement officer, the SE shall:

- a. Recommend an acquisition team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a well-developed solicitation, a comprehensive evaluation of offers, and effective negotiations (see R. 19-445.2017B(3));
- b. Approve the acquisition plan and the solicitation before solicitation release;
- c. Ensure consistency among and sufficiency of the solicitation requirements, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;
- d. Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation;
- e. Consider the recommendations of subject matter experts, advisory boards or panels (if any); and
- f. Select the source or sources whose proposal is the best value to the State, as provided in R. 19-445.2099K

#### **2.2.9 Designee**

A specified person acting on behalf of another. (If you have been delegated procurement authority you are a designee. SCDOT has been delegated authority to act on behalf of the State under the State Procurement Code. This authority can be revoked.

#### **2.2.10 Requester**

An individual who initiates a purchase shopping cart or directs another to procure a commodity (goods) or service. (Anyone can be a requester).

### **2.3 Roles in the District Office**

#### **2.3.1 Procurement Liaison - Field office**

Certification level up to \$25,000; procurement liaison role which could perform some job duties of a Procurement Specialist 1 or 2.

### **2.4 County offices**

#### **2.4.1 Procurement Liaison – Field office**

Certification level up to \$25,000; perform some duties as Specialist 1 or 2 for purchases under \$25,000.

## PART 2 – NON-EXEMPT PROCUREMENTS

### CHAPTER 1: NON-EXEMPT AUTHORITY AND PROCEDURES

#### 1.1 Authority

For the procurement of non-exempt goods and services, SCDOT is mandated to follow the procedures set forth in the State Procurement Code, Code of Laws of South Carolina, 1976, Chapter 35 – (General Appropriations Act of 1980-81).

#### 1.2 Certification

SFAA is authorized to assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The SFAA has reviewed SCDOT's internal procurement operation and has certified in writing that it is consistent with the provisions of the State Procurement Code and the ensuing regulations. The SFAA has recommended the below dollar limits for SCDOT's procurements not under term contracts. As provided in the State Procurement Code, section 11-35-1210, SCDOT is authorized to engage in in-house procurement actions up to SCDOT's certification limits as follows:

- a. not to exceed \$1,000,000 per commitment for supplies;
- b. not to exceed \$500,000 per commitment for services;
- c. not to exceed \$100,000 per commitment for consultant services (opinion specialists, consultant's engaged to perform studies); (19-445.2025)
- d. not to exceed \$100,000 per commitment for information technology;
- e. not to exceed \$500,000 per commitment for vertical building construction services;
- f. not to exceed \$100,000 per vertical building construction contract change order;
- g. not to exceed \$25,000 per change order for initial architect/engineer contract.

Purchases under SFAA Statewide contracts and exempt procurements under 11-35-710(1) are not subject to the above certification limitations.

The above certification limits are restricted to and only available for procurement by the SCDOT Headquarters Procurement Office in Columbia. All SCDOT district and local office locations, that have personnel that have had the training and who have been certified to conduct procurements, shall have the delegated authority only up to \$25,000 for the procurement of goods and services. All procurements over \$25,000 must be forwarded to the SCDOT Headquarters Procurement Office in Columbia.

#### 1.2.1 Process for Procurements in Excess of the Certification Level

##### Request for Delegation from the Division of MMO

- a. Process For Justification
  1. Description Of Need
  2. Method of Procurement

3. Term
  4. Dollar Amount
  5. Market Research
- b. All requests must be approved by Director of Procurement

### **1.3 Non-Exempt Protest Procedures**

Vendors/Offerors seeking to protest shall be directed by the Procurement Officers to adhere to the requirements of the Procurement Code Section 11-35-4210. Authority to resolve protest by SCDOT is located at 11-35-4210(3), with concurrence from MMO.

### **1.4 Specification**

If specifications are used in the solicitation, Procurement Officers adhere to the requirements Regulation 19-445.2140. Specifications set the standards against which performance and design are evaluated. Poor or incomplete specifications are one of the key root causes of contract issues. The Procurement Officer must take the time to think through the specifications details and ask for help if necessary. The SCDOT specifications:

- a. are minimum requirements
- b. allow fair and open competition
- c. allow equitable award at lowest possible price.

Specifications utilized by SCDOT are not to be considered restrictive, but only a means of identifying the necessary salient characteristics (requirements). The specifications must give enough information to adequately describe the goods needed so all will know what they are trying to buy. **Specification must be non-restrictive.**

### **1.5 Anticipation of Needs**

In an attempt to consolidate procurements with the purpose of reducing handling efforts, created emergencies, last minute purchases, obtaining lower cost at volume buying, and to assist management in budgeting preparation, each Division, District and County, where possible, shall submit to the Procurement Office those commodities or services forecasted for the upcoming fiscal year for contract bidding or volume buying.

Director of Procurement shall provide guidance to District on how to forecast the budgeting of goods and services for the upcoming fiscal year.

### **1.6 Non-Exempt Contract Clauses**

For non-exempt procurements, SCDOT shall use the Compendium of Contract Clauses for the required contract clauses for nonexempt contracts. The Compendium of Standardized Clauses is used by the Division of Procurement Services (DPS). These clauses have been tailored for use in procurements conducted pursuant to the State Procurement Code by DPS. The Compendium provides recommendations to assist state Procurement Officers in fulfilling their responsibilities

[https://procurement.sc.gov/files/20150610\\_2.0.1\\_PUBLISH.pdf](https://procurement.sc.gov/files/20150610_2.0.1_PUBLISH.pdf)

## **1.7 Disclosure of Procurement Information for Non-Exempt Procurement**

### **1.7.1 Request for Documents Prior to final award:**

- a. SCDOT may keep portions of a procurement confidential and release the information to prospective Proposers only upon execution of a nondisclosure agreement, provided the information is otherwise exempted from disclosure by law.
- b. 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.
- c. 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.
- d. This request for procurement documents is limited to the actual bidder, offeror, contractor, or subcontractor and not to the public at large. The public shall follow FOIA procedures.

### **1.7.2 Requests for Documents After Final Award**

An actual bidder, offeror, contractor, or subcontractor shall follow FOIA procedures after final award.

### **1.7.3 Disclosure of Information Prior to Award**

Source Selection Information shall not be disseminated prior to award unless authorized by the Procurement Officer. Source selection information is:

- a. proposal costs or prices submitted in response to a solicitation
- b. source selection plans
- c. technical evaluation plans
- d. technical evaluation of proposals
- e. cost and price evaluation of proposals
- f. information regarding reasonable susceptibility of award
- g. rankings of proposals, responses, competitors
- h. reports, evaluations evaluation committees
- i. other information on a case by case basis determined by the PO that would jeopardize the integrity or successful completion of the procurement.
- j. number of offerors or their identity
- k. as provided in Regulation 19-445-2010

## 1.8 Pre-Bid Conferences (19-445.2042)

- a. Pre-bid conferences may be conducted. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids.
- b. Notice of the conference must be included in the notice of the solicitation.
- c. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment.
- d. A potential bidder's failure to attend an advertised pre-bid conference will not excuse its responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State.
- e. Pre-bid conferences may not be made mandatory absent a written determination by the SCDOT Secretary of Transportation or designee that the unique nature of the procurement justifies a mandatory pre-bid conference and that a mandatory pre-bid conference will not unduly restrict competition.

## 1.9 Cost and Pricing Data (11-35-1830; Reg 19-455.2120)

### 1.9.1 Cost and Pricing Data requirements

Contractor shall submit cost or pricing data and certify it is accurate, complete and current prior to the date of:

- a. pricing of any contract awarded by competitive sealed proposal, by competitive negotiations, or sole source where the total contract price exceeds \$500,000.
- b. the pricing of any change order, contract modification or termination settlement which exceeds \$500,000. This requirement does not apply when unrelated and separately priced change for which the cost or price data would not otherwise be required are included for administrative convenience in the same modification.
- c. In order to determine the \$500,000 threshold, calculate both increase and decreases in price resulting from change orders, contract modification and termination of settlement.

### 1.9.2 Cost and Pricing Data not required.

Cost or Price data is not required for the following contracts:

- a. where the contract is based on adequate price competition (sealed proposals where at least 2 responsive and responsible offerors compete
- b. where the contract price is based on established catalog prices (11-35-1410) or market prices (means current price)
- c. where it is determined in writing in accordance with regulation that this requirement may be waived.

### **1.9.3 Refusal to submit data**

A refusal by the offeror to supply the requested information may be grounds to disqualify the offeror or to defer award pending further review and analysis.

## CHAPTER 2: NON-EXEMPT PROCUREMENT UNDER \$25,000

### 2.1 Procurement Under \$25,000 that are Non-contract Purchases

#### 2.1.1 Two Thresholds for Buyers – No competition and 3 Written Quotes:

##### 2.1.1.1 No Competition for purchases \$0-\$10,000

- a. \$0-\$10,000– No or little competition required. If no contract for the product is in place, follow the small purchase procurement process.
- b. Small Purchases Under \$10,000 (11-35-1550(2)(a).
  - i. Non-contract purchases under \$10,000- No competition. Field buyers do not need to secure competitive quotations if the prices are considered reasonable, however must annotate the purchase requisition as “PRICE IS FAIR AND REASONABLE” and sign it. Buyer shall ensure that the purchases are distributed equitably among qualified suppliers, and shall not be from the same supplier for repeat orders, when practical. PURCHASES NOT IN EXCESS OF \$10,000 MAY BE ACCOMPLISHED WITHOUT SECURING COMPETITIVE QUOTATIONS IF THE PRICES ARE CONSIDERED To be “fair and reasonable”. The shopping cart shall annotate “Price is fair and reasonable” and authorized individual shall approve the shopping cart.
  - ii. Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order.
  - iii. The administrative cost of verifying the reasonableness of the price of purchase ‘not in excess of’ may more than offset potential savings in detecting instances of overpricing. Therefore, action to verify the reasonableness of the price need be taken only when the responsible individual suspects that the price may not be reasonable, e.g., comparison to previous price paid or personal knowledge of the item involved.
  - iv. For non-contract purchases under \$2,500, use the Procurement Card. The procurement card is the preferred method of making purchases under \$2,500. The procurement card cannot be used for:
    - 1) Inventory items (stockpile included)
    - 2) SCDOT Contract items.
    - 3) Do not use the procurement card for internet purchases unless otherwise authorized in writing from Chief Procurement Officer for Project Delivery.

- 4) Delegated authority cannot be granted for P-CARD receipts. The card holder must sign all receipts.
    - c. P-CARD Transactions
- P-CARD transactions shall be used when practical for purchase of goods under \$2,500. Purchase may be made by calling the order in and using the card number, or by local pick up. Procurements over the Internet using the P-CARD are prohibited unless approved in advance or otherwise noted in the SCDOT Purchasing Card Program Policy and Procedures Manual. Internet usage of the P-CARD requires the written approval of the Chief Procurement Officer for Project Delivery. P-CARD can be used to purchase items under State contract, but must be properly documented on the P-CARD Receipt with the contract number. P-CARD can only be used by the person whose name appears on the card.

P-CARD purchase receipts shall be signed by the authorized cardholder and attached to the monthly statement. The statement shall be reconciled and signed by the liaison. The cardholder's manager shall also sign the statement attesting that all transactions are authorized and supporting documentation was provided.

#### **2.1.1.2 Three Written Quotes or SCBO for purchases under \$25,000**

- a. Written request for solicitation of written quotes from a minimum of three qualified sources of supply may be made;
- b. Three bona fide quotes (responsive and responsible quotes) required and must be attached, unless adequate public notice is provided in SCBO. Adequate notice is a minimum of 3 full business days.
- c. If advertising in SCBO is required, must contact the SCDOT Buyer to create a solicitation number in SCEIS
- d. Under \$100,000, for a small purchase of commercially available off-the-shelf products;
- e. Under \$100,000 for a small purchase of construction;
- f. "No bids" are not acceptable and are no longer allowed;
- g. Requests should be made to vendors who deal in the commodities or services
- h. Freight must be a separate line item with commodity code 96286
- i. Buyers should use the Request for Informal Quote
- j. Form 3085 shall be used for tabulation of quotes unless advertised in SCBO.

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 suppliers unless advertised as provided above.

Purchases between \$10,000 and \$25,000 require the written solicitation of a minimum of three written quotes from qualified sources and documentation of quotes attached to the shopping cart on Form 3085. The award shall be made to the lowest responsive and responsible source. Procurements within this dollar amount will be reviewed by the Procurement Office through SCEIS to ensure the Procurement Code has been followed.

### **2.1.2 Advertised Small Purchase.**

Written solicitation of written quotes, bids, or proposals may be made for a small purchase. The procurement must be advertised at least once in the SCBO. 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.

### **2.1.3 Shopping Carts**

Shopping Carts do not encumber funds. Shopping carts are for when you have purchases that are:

- a. Non-contract goods and service under \$25,000:
  - i. Login to SCEIS through SRM State Employee Login
  - ii. Go to Employee Self Service Tab
  - iii. Shop
  - iv. NIGP/Contract Search
  - v. NIGP Search
  - vi. Select commodity
  - vii. Punch out
  - viii. Select vendor
  - ix. SRM200U for full tutorial
- b. Contract items: (shopping cart must be connected to a contract)
  - i. Login to SCEIS through SRM State Employee Login
  - ii. Go to Employee Self Service Tab
  - iii. Shop
  - iv. NIGP/Contract Search
  - v. Contract number or description of search
  - vi. Select and punch out
  - vii. SRM200U for full tutorial
  - viii. U Perform Link:  
<https://upersm.sc.gov/gm/workplace>
- c. items under solicitation (\$10,000 - \$25,000)
  - i. Attach 3 bona fide quotes, responsive, and responsible quotes, if cannot obtain the 3 quotes, must advertise for at least 3 business days in SCBO

- ii. Prepare Form 3085 and/or advertise in SCBO
- iii. If advertising in SCBO, must create a solicitation number in SCEIS
- iv. Input as many exact commodity codes as possible
- v. Attach completed checklist and associated items
- vi. Price and accurate quantity estimates
- d. Items under solicitation (\$25,000 - \$100,000)
  - i. Follow procedure for Shopping Cart up to \$10,000
  - ii. Attach scope of work (services) or specification (tangible items) in WORD - NOT a PDF
  - iii. At least one quote (three if possible but not necessary)
- e. Items under solicitation (Over \$100,000)
  - i. Follow process for \$25,000-\$100,000)
  - ii. Checklist to be completed and attached with:
    - (1) documentation of market research
    - (2) documentation of acquisition planning
    - (3) specifications and/or scope statement
  - iii. Once the attached checklist and the documents are reviewed, the Director of Procurement will certify.
  - iv. If items are missing or are incomplete, procurement cannot proceed

## **2.2 Procurement under \$25,000 subject to Statewide/SCDOT Contract**

1. Identify if there is an existing contract for the product or materials needed. Check with SCEIS or SCDOT Procurement Office to determine if an existing statewide or SCDOT Agency contract is in place. If no contract for the product is in place, follow the small purchase section.
2. Shopping carts are created for purchases where the products already subject to a statewide or SCDOT contract. Determine if the product is under contract, if confirmed, then create a purchase order and manage the procurement under the SCEIS system. When creating a purchase order, ensure that the correct purchase order type is selected. Once the purchase order is created, the purchase order type cannot be changed in SCEIS. If it is incorrect, a new purchase order must be started.
3. Shopping cart set up should include the attachment of the specifications.

### **2.2.1 Shopping Cart**

1. Performed by Initiator/Requestor
2. Approval by \*Designated Management Approval

NOTE: All purchases in the Maintenance Division that exceed \$10,000 must be approved by the Director of Maintenance's Office (DMO) before these procurements can be made. All herbicide requisitions must be approved by the DMO prior to procurement. All equipment purchases of \$2,500 or more are created by Supply and Equipment Office. Furniture greater than \$2,500 must be approved by Capital Improvements Office. NOTE: Review **Fiscal Procedure Memorandum 69** for additional requirements and/or information.

### 3. Shopping Cart Process

Shopping carts are to be issued for each separate class of item required and according to the sources of supply as follows:

- a. Items to be purchased from outside sources.
- b. Items to be delivered by Supply Depot.
- c. Items to be delivered by Equipment Depot.

### 4. Paper Flow from Shopping Cart Stage to Payment of Invoice

- a. Need to purchase item or service is perceived or indicated.
- b. SCEIS - A shopping cart is developed by requester. The following information is completed, if possible: date; delivery date requested; suggested vendor; ship to address; invoice to address; quantity of commodity desired; unit of measure; description or specifications of commodity; unit cost or estimated unit cost; extended cost per commodity; requester's name; approver; accounting/budget information.
- c. The shopping cart must have specific approval by the appropriate supervisory personnel and approval levels based on the criteria listed above.
- d. For procurements of \$25,000 or less the field location has delegated procurement authority.
  - i. When sent to Procurement, the shopping cart is reviewed for completeness
  - ii. If incomplete, the Procurement Manager will contact the field location for additional information and/or clarification
  - iii. When complete, Procurement personnel determines method of purchase
- e. Shopping cart setup should include the attachment of the specifications.

- f. Purchase Order created
- g. Goods and/or services received/provided
- h. Invoice received
- i. Invoice processed through MIGO in SCEIS
- j. Invoice sent to Accounting after receiving document number in MIGO and recording it on the invoice.

### **2.2.2 Information Technology Purchases**

For Information Technology Services for software and any other IT procurement exceeding \$500.00, the process is as follows:

- 1. Performed by Initiator/Requestor
- 2. Approved by \*Designated Management Approval

**NOTE:** All shopping carts over \$500 per unit price or for all software must be sent to Headquarters and signed by IT services. Information Resource Consultant (IRC) must approve all IT purchases for their districts up to \$500. Approval must be given to district personnel in writing by the IRC in advance of procurement being made. Changes to the Operating Systems or the standard suite of products (Microsoft Office) are not permitted.

**NOTE:** The purchase of certain electronic equipment requires the approval of the appropriate Deputy Secretary or their designee. Refer to Fiscal Procedure Memorandum 79 for additional requirements and/or information. For those IT purchases over \$50,000 they must be included in the agency's IT Plan and submitted to the Division of State IT for approval.

### **2.2.3 Contract Purchases under \$25,000**

- 1. Performed by Initiator/ Requestor
- 2. Approved by \*Designated Management Approval

**NOTE:** All shopping carts to establish contracts must be sent to the Procurement Office.

## **2.3 Procurements Over \$25,000 that are Non-Contract Purchases**

- 1. All non-contract purchases over \$25,000 must be procured through the SCDOT Headquarters Procurement Office. Field buyers or district buyers shall not procure over \$25,000 limit. For Purchases over \$25,000, procurement office prepares written solicitation to obtain formal written quotes (quotes or proposals), if necessary (see Commercial off the Shelf and Small Construction section(s) 2.5 below). The procurement shall be advertised at least once in the "South Carolina Business Opportunities" publication. A copy of the written solicitation and written quotes shall be attached to the resulting solicitation or Purchase Order. The award shall be made to the lowest responsive and responsible offeror or, when a request for proposal process is used, the highest ranking offeror that is responsive and

- responsible. The types of solicitation approaches for this procurement are found at 11-35-1550(2)(c)- (3); SC Reg. 19-445.2100.
2. Non-contract purchases between \$25,000 and \$100,000 (11-35-1550(c))
  3. Advertising Threshold. Except for procurements of either commercially available off-the-shelf products or construction, if conducted pursuant to Three Written Quotes, all competitive procurements above \$25,000 must be advertised at least once in SCBO.
  4. SCDOT may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.
  5. Preferences are applied for procurements over \$25,000 that are not conducted pursuant to 11-35-1550(b) – 11-35-1524
  6. Protest language for all procurements over \$50,000
  7. Procurement Specialist I or Procurement Manager I establishes the requirement with the end user (local, district personnel or HQ person). Assignment to Procurement Specialist and Procurement Manager are based on size and complexity of the procurement. Verbal request followed by written request describing the type and need for the procurement. Email is allowed for low level/low dollar requests. Complicated/high dollar/specification-intensive requests require formal written documentation. Specifications (Part 2, Chapter 1, Section 1.4), if necessary, need to be part of the established written requirements and provided to the Procurement Office in WORD format.

## **2.4      Commercial off the Shelf and Small Construction over \$25,000 and less than \$100,000**

Items that fall within the definition of commercially available off the shelf product (see 11-35-1410) or a small purchase of construction may be procured as a small purchase under 11-35-1550(b) up to \$100,000. These purchases follow the same rules as Small Purchases (see Part 2, Chapter 2, Section 2.1.1.2).

## **2.5      Type of Contracts-Purchased Over \$25,000 non-contract purchases**

The South Carolina Department of Transportation utilizes contracts in its efforts to operate in an efficient and organized manner, eliminating unnecessary processing of purchase orders.

The contracts listed below may be used from time to time:

### **2.5.1    Single Term Contracts**

Used for delivery of specific goods or services at specified prices over a longer period of time such as six months or a year.

### **2.5.2 Term Contracts**

Contracts where the initial term is one (1) year and has the option to renew for up to four (4) additional one-year periods. A contract is not a multi-term contract if no single term exceeds one year and each term beyond the first requires the governmental body to exercise an option to extend or renew (Reg. 19-445.21435).

### **2.5.3 Multi-Term Contracts**

Contracts where the initial term of the contract is longer than one (1) year. It may have renewable options as well, but cannot be longer than five (5) years without approval from the Materials Management Office pursuant to 11-35-2030(4). Multi-term contracts up to seven (7) years may be approved by an SFAA designated officer. Contracts exceeding seven (7) years must be approved by the SFAA board. Multi-term contracts require a written justification. Multi-term contracts applies only to contracts for supplies, services, or information technology and does not apply to contracts for vertical building construction. (Reg. 19-445.2135). See Regulation 19-445.2135 for specific language to insert into the solicitation for multi-term contracts.

To qualify for renewal, such contracts must clearly address all aspects, terms and conditions for renewal, including price adjustments.

### **2.5.4 Indefinite Quantity Contracts for Professional Service (IQC)**

Indefinite Quantity Contracts may be awarded on an as-needed basis for Professional Services (non-exempt architectural-engineering and land-surveying services) pursuant to Section 11-35-3310. Each contract must be limited to a total expenditure of \$300,000 for a two-year period with individual project expenditures not to exceed \$100,000 dollars. The forms are posted on the OSE website under the 2019 Manual and are available for use.

### **2.4.5. Task Order Contracts for Non-Exempt Construction Services.**

Posted in Chapter 9 and Appendix D in draft format in the following location: <https://procurement.sc.gov/manual>. Chapter 9 and these forms will be posted in final form in the OSE Manual for use by State Agencies.

Process:

1. Only enter into task order contract to acquire non-exempt construction services when the exact time or exact quantities of future tasks are not known at the time of contract award. (11-35-3320)
2. Limited to entering into task order contracts with 4 businesses for each geographic area for each licensing classification for construction.
3. A task order contract for construction must be procured using competitive bid proposal process (11-35-1530).
4. Limited to 5 years term, including extensions.

5. Total expenditures for all task order contracts from single solicitation may not exceed \$4 million.
6. Total construction cost of single project using multiple task orders may not exceed \$500,000.

#### **2.5.5 Small Indefinite Quantity Contracts (A/E and Land surveying)**

Small indefinite delivery 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 regulations promulgated.

- (1) Services estimated not to exceed \$50,000 may be awarded by direct negotiations and selection (11-35-3230).
- (2) Maximum value for small contracts with one firm or person for non-exempt A/E, construction management or land surveying may not exceed \$150,000 in a 24 months period.
- (3) No splitting fees to break projects into small projects to circumvent this provision.
- (4) Procurement Officer must only negotiate with one firm at a time.

Procurement Officer to ensure that the procurement complies with Reg. 19-445-2145 for design of permanent improvement projects (buildings) or participation in any report or study.

#### **2.5.6 Indefinite Quantity Contracts**

With approval of the CPO, the PO may establish contracts providing for indefinite quantity, within the SCDOT maximum or minimum limits, of specific supplies, service, or information technology, to be furnished during a fixed period.

## CHAPTER 3: NON-EXEMPT PROCUREMENT OVER \$100,000

All non-exempt procurements of commodities and services in excess of \$100,000 shall be handled by the Procurement Office or, if they should exceed SCDOT's certification level, forwarded to Division of Procurement Services, SFAA. Purchases exceeding \$100,000 for goods and services, information technology, consultant services (statewide or non-project specific), an aggregate of those purchases, and roadway foundation aggregate that is to be delivered, shall be handled by competitive procedures and advertised at least once in the "South Carolina Business Opportunities." All sealed bids shall be obtained by the Procurement Office or, if they exceed SCDOT's certification level, forwarded to Division of Procurement Service.

### 3.1 Pre-solicitation Activities

A checklist must be completed and attached to the shopping cart. See Appendix for checklist. Included in the checklist shall be the following documents:

1. Documentation to satisfy an audit. General rule of thumb to pass audit is to answer who, what, when, why, where, and how questions.
2. Include market research. This shall include pricing and documentation that procurement officer communicated with industry on the product or service. If necessary, and RFI may be issued. For RFI to be issued, contact the Director of Procurement for approval.
3. Include acquisition planning report – If an acquisition has been established, the Procurement Officer shall follow the SCDOT's plan. If no plan has been established, Procurement officer shall:
  - a. Involve Procurement, Legal, Finance and end user in the establishment of the acquisition plan
  - b. Establish lead time of 4 months to:
    - i. Review initial materials, edits, rework, and finalization
    - ii. Advertising period
    - iii. Protest periods for each step: publishing, Q&A, amendments, intent to award and award.
    - iv. For large solicitations, tabulation, scoring, responsibility check can take a significant amount of time.
4. Advise Procurement Director of unplanned/unknown needs that may arise
5. Advise end users that procurement takes time.

The above documents and activities must be done prior to asking for approval or delegation. Once the check list is completed and pre-solicitation activities performed, the procurement will be certified by the headquarters Procurement Office.

### 3.2 Methods of Procurement for purchases over \$100,000

Competitive procedures for procurement exceeding \$100,000 are listed below from a-g.

- a. Pre-solicitation activities required – Reg. 19-455.2017

- b. 11-35-1520 (Preferred Method – Competitive Sealed Bid)
- c. 11-35-1525 (Fixed Price Bidding)
- d. 11-35-1528 (Best Value Bidding)
- e. 11-35-1529 (Reverse Auction)
- f. 11-35-1530 (Competitive Sealed Proposal – RFP)
- g. 11-35-1535 (Competitive Negotiation)
- h. 11-35-1560 (Sole Source)
- i. 11-35-1570 (Emergency)

All methods, other than 11-35-1520, require a written determination as to why it was chosen. Forms for these justifications can be found at [www.procurement.sc.gov](http://www.procurement.sc.gov).

Purchase exceeding \$100,000 may also be procured using sole source and emergency procedures. See chapters 6 and 7 for sole source and emergency procurement procedures.

### **3.3 Competitive Sealed Bids (11-35-1520)**

Invitations for Bids are used to initiate competitive sealed procurements in excess of \$100,000. All procurements shall be handled in accordance with the State Procurement Code depending on the competitive method described above: Ensure that you have the following items incorporated in your solicitation:

- a. Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information;
- b. The purchase description, evaluation factors (if any), delivery or performance schedule, and such inspection and acceptance requirements that are not included in the purchase description;
- c. The contract terms and conditions, including warranty, bonding, or other security requirements, as applicable;
- d. Instructions to bidders to visibly mark as “confidential”, “proprietary” or “trade-secret” each part of their bid which they consider to be proprietary information; and .
- e. Instructions shall include that bidding time will be set to provide bidders a reasonable time to prepare their bids. See Reg. 19-445.2030. However, a minimum of seven days following publication of the solicitation shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the State Chief Procurement Officer.

### **3.3.1 Bidder's List must be updated**

A bidder's list for specific commodities is kept in SCEIS by commodity code. The SCEIS system automatically selects bidders who have registered as a vendor by specific commodity codes and sends an email alerting them to the issuance of the solicitation.

Procurement manager shall:

- a. Add known bidders to the bidder list during the solicitation process;
- b. Request inclusion of commodities qualified bidders via ZMM Buyer; and
- c. Manually adding email addresses to ZMM Buyer notification.

Any suggested vendor, the incumbent vendor, or vendors who have expressed an interest in the solicitation shall be selected through SCEIS to receive an email by the Procurement Manager issuing the solicitation. The Procurement Code does not require a specific number of bidders be solicited or that a list be maintained; however, when sources are identified they will be notified through the SCEIS system.

All sources of goods and services requesting to be put on a bidder's list shall be directed to the following link in order to register as a vendor for the State of South Carolina ([www.Procurement.sc.gov](http://www.Procurement.sc.gov)), unless the State Chief Procurement Officer or head of the procurement agency makes a written determination that the sources should not be enlisted in accordance with regulations of the Board. Decisions to reject enlistment can be appealed to the appropriate State Chief Procurement Officer and the Procurement Review Panel as specified in Article 17 of Chapter 35 of the State Procurement Code.

### **3.3.2 Amendment of Solicitations**

Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and prevent the unnecessary exposure of bid prices. Solicitations may be amended to change opening acceptance period, specifications, terms and conditions, or other requirements. Changes to any solicitation shall be in writing in the form of an Amendment.

Process: Contact supervisor for process.

### **3.3.3 Receipt and Safeguarding of Bids**

All submitted bids (including modifications) received prior to the time of opening shall be kept secure and unopened, except as provided for by regulation of the Board. If an invitation for bids is canceled prior to bid opening, unopened bids shall be returned to the bidders. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to state employees, and

then only on a “need to know” basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of the characteristics of samples before bid opening. See 2.4.111-35-1520(4); Reg. 19-445-2045(a)

The Procurement Specialist I in Headquarters Procurement receives, date and time stamps, and then files bids by opening date in a locked file cabinet.

#### **3.3.4 Bid Opening**

The procurement officer of the governmental body or his designee shall decide when the time set for bid opening has arrived, and shall so declare to those present. The Procurement Officer or designee shall then personally and publicly open all bids received prior to that time, read them aloud to those persons present. The same procedure shall occur if no persons are present, with the exception that reading aloud is performed as may be practicable. The amount of each bid and such other relevant information, together with the name of each bidder shall be disclosed. Bids shall be tabulated and made available at that time for review.

- Process:
- a. Designated procurement specialist collects the submitted bids
  - b. Prepares the registration sheets
  - c. Formally announces the opening of the bids
  - d. Date and time stamps the bids
  - e. Proceeds with opening.
  - f. Maintains record of all publically read bids on the tabulation sheet
  - g. See opening procedures at 19-445.2050

#### **3.3.5 Unidentified Bids**

Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the State Chief Procurement Officer, the Procurement Officer of the governmental body, or a designee of their office. See 19-445.2045(b).

#### **3.3.6 Postponement of Bid Opening**

The procurement officer may issue an amendment postponing bid openings as follows:

- a. Causes beyond control of bidders (e.g., flood, fire, accident, weather conditions);
- b. When emergency or unanticipated events (force majeure) interrupt normal governmental operations the bid opening will be postponed to the same time on the next official business day;
- c. When it has been determined the specifications for goods or services need to be amended.
- d. See Reg. – 19-445.2050(b)

### **3.3.7 Disclosure of Bid Information**

Only the information disclosed by the procurement specialist or officer bid opening is considered to be public information under the Freedom of Information Act, Chapter 3 of Title 30, until an award is made. Reg. 19-445.2050(c)

### **3.3.8 Bid Acceptance and Bid Evaluation**

Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in the State Procurement Code. The invitation for bids shall set forth the evaluation criteria to be used. No criterion may be used in bid evaluations that are not set forth in the invitation for bid. Bids shall be evaluated based on the requirements set forth in the invitation for bids and in accordance with the regulations of the Board. Reg. 19-445.2055.

Process:

- a. No exception to Price, delivery time, quantity, terms and conditions, etc.
- b. No conditional bids
- c. Did the offeror/vendor follow the bid schedule
- d. See 19-445.2070 – for rejection of bids criteria
- e. See 11-351520(13) for minor informalities
- f. Non-responsive bids shall be rejected – See 19-445.2070
- g. Exception to reject is if the bid is in the mail room.

### **3.3.9 Fax Transmitted Bids**

Fax transmitted or email bids/quotes in excess of \$100,000 shall not be accepted. Procurements made under the small purchase procedures as outlined in the Procurement Code may be accepted via facsimile (fax) or email. No bid that is faxed prior to the date and time stated as the bid opening date will be accepted.

### **3.3.10 Rejections of Individual Bid**

Any bid that fails to conform to the essential requirements of the invitation for bid shall be rejected as being non-responsive. Unless there is a compelling reason to reject one or more bids, award will be made to the lowest responsible and responsive bidder. See - 19-445.2065 and 19-445.2070.

### **3.3.11 Cancellation of Bids Prior to Award. 19-445-2065**

- a. Procurement office shall follow the procedures in Reg. 19-445.2065(B); see also SC Code 11-35-1520
- b. Advise the Director of Procurement of the situation and obtain written approval for cancellation of the procurement prior to award. Written approval shall be retained in the procurement file
- c. Upon receipt of approval, procurement officer notifies end user of cancellation
- d. Procurement Officer posts cancellation of bid prior to award on SCEIS

- e. Document the procurement with sufficient detail as to reasons for cancellation

### **3.3.12 Extension of Bid Acceptance Period**

Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement.

Process:

- a. See Reg. 19-445.2065(c)
- b. Notify Procurement Manager and end user prior to extension
- c. Prior to extension, contact any bonding sureties regarding extension, if applicable.
- d. Post the extension notice on SCEIS

### **3.3.13 Alternate Bids**

Any bid that does not conform to the specifications contained or referenced in the invitation for bids may be rejected unless the invitation authorizes the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation. It will be the sole determination of the SCDOT as to whether the alternate meets the requirements of the bid solicitation. Reg.19-445.2070.

Process:

- a. Procurement specialist shall prepare a manual tabulation to include the alternate bids
- b. The manual tabulation will be appended to the solicitation in the Share drive

### **3.3.14 Exceptions to Rejection Procedures**

Any bid received after the Procurement Officer of the governmental body or his designee has declared that the time set for the bid opening has arrived, shall be rejected unless a bid was in the possession of the designated procurement office and had been misplaced by state employees in that office or mail room. In this event, the State Chief Procurement Officer, or the Procurement Officer of the governmental body, shall annotate the bid tabulation and consider the misplaced bid along with the other previously received bids.

### **3.3.15 All or None Qualifications**

If the invitation for bids provides offerors an opportunity to submit a bid for line item(s) or lot(s), a bid is not rendered non-responsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group of the items included in the invitation for bids. However, bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such

qualification is substantive and affects the rights of the other bidders. Reg. 19-445.2075.

Process: If a bid is submitted with an “all or none” notation, contact the Procurement Director for guidance.

#### **3.3.16 Bid Reductions - 19-455.2080**

The responsible procurement officer may accept a voluntary reduction in price from a low bidder after bid opening but prior to award; provided that such reduction is not conditioned on, nor results in, the modification or deletion of any conditions contained in the invitation for bids.

#### **3.3.17 Correction or Withdrawal of Bids; Cancellation of Awards 19-445.2085**

Corrections or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and re-award of awards or contracts, after award but prior to performance may be permitted in accordance with regulations promulgated by the Board. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but prior to performance shall be supported by written determination of appropriateness made by the State Chief Procurement Officers or head of a Procurement Agency.

#### **3.3.18 Tie Bids See 11-35-1520(9)**

If two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined in the order of priority set forth in 11-35-1520(9)

#### **3.3.20 Award – 11-35-1520(10)**

Unless there is a compelling reason to reject bids as prescribed by regulation of the Board, notice of an award or intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements as set forth in the invitation for bid must be given by posting the notice at a location specified in the invitation for bid. See Reg. 19-445.2090; 11-35-1520(10).

Process:

- a. Procurement Officer accepts the winning proposal in SCEIS
- b. Procurement Officer moves the solicitation to contract
- c. Post contract in SCEIS website in accordance with 11-35-1520(10)
- d. Ensure all procurement documents are in the procurement file.

### **3.3.21 Negotiations after Unsuccessful Competitive Sealed Bidding 11-35-1540**

When bids are received in accordance with the Procurement Code and are considered unreasonable, 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 State Chief Procurement Officer, the head of the Agency, or the designee of either officer above the level of the Procurement Officer, that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

- a. Each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
- b. The negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation;
- c. The negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.

Process: See Director of Procurement

### **3.3.22 Request For Qualifications – During Sealed Competitive Bids**

Prior to soliciting bids, the Procurement Officer, may issue a request for qualifications from prospective bidders. Such requests shall contain at a minimum a description of the goods or services to be solicited by the invitation for bids, the general scope of work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract.

Adequate public notice of the request for qualifications shall be given in the manner provided in Section 11-35-1520(3) of the State Procurement Code.

After receipt of the responses to the request for qualifications from prospective bidders, the prospective bidders shall be ranked from most qualified to least qualified on the basis of the information provided. Bids shall then be solicited from at least the top two prospective bidders by means of an invitation for bid. The failure of a prospective bidder to be selected to receive the invitation for bid shall not be grounds for protest under Section 11-35-4210.

Process:

- a. End user requests specific vendors for the solicitation and submits written justification for request to qualify specific vendors
- b. Procurement Officer receives justification for request for qualification for specific qualify vendor

- c. Procurement Officer publishes a Request for Qualification notice in either SCBO or SCEIS. – ask procurement management for RFQ format
- d. SOQ are received; opening follows the same processes the RFP process, if necessary (i.e. some qualification requests could be yes or no responses).
- e. See RFP (Part 2, Chapter 3, Section 3.8)

### **3.4      Procurement Vendor/Product Preference (11-35-1524)**

Resident Vendor, Resident Contractor, Resident Subcontractor, US End Product, and South Carolina End Product preferences are fully described in 11-35-1524. The preferences are used to give in-state vendors and those who are going to use in-state workers a possible advantage when submitting offers. Preferences are used for evaluation only and do not have an effect on the actual price that will be paid. Offerors must have the ability to claim preferences in all solicitations except as noted below:

- 1. Any line item unit price over \$50,000 (NOTE: ensure you check each line item in solicitation for proper application.)
- 2. Procurements in aggregate in excess of \$500,000.
- 3. Motor vehicle
- 4. Construction
- 5. Small purchases less than \$25,000
- 6. Commercial Off the Shelf purchases made pursuant to 11-35-1550 (b)
- 7. RFP

**Ask the Procurement Director for Commodities and Services for guidance.**

**NOTE** – SCEIS will automatically populate the “Preference” clauses. Please ensure these clauses are omitted from the above solicitations.

### **3.5      Competitive Fixed Price Bidding – Non-Exempt – 11-35-1525**

The purpose of fixed price bidding is to provide multiple sources of supply for specific goods or services based on a pre-set maximum price that SCDOT will pay for goods or services.

Process:

- a. End user provides maximum amount SCDOT will pay for the goods or services desired.
- b. Written justification (Form 104a) (submitted to MMO only if it goes to them) that the use of competitive sealed bidding is either not practical or not advantageous to the State,
- c. Following the provisions of competitive sealed bidding in Section 11-35-1520 and regulation 19-445. 2030.
- d. Bidders who did not respond to the initial fixed price bid MAY be added to the awarded vendors list provided the bidder furnishes evidence of

- responsibility and responsiveness to SCDOT's original fixed price bid as authorized by the solicitation.
- e. The failure of a specific offeror to receive business, once it has been added to the awarded vendor list, shall not be grounds for a contract controversy.

### **3.6 Competitive Best Value Bidding- 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 goods or services based on pre-determined criteria identified by SCDOT.

Cost must be a factor in determination of award and cannot be weighted less than sixty (60%) percent; all other criteria shall be weighted 40% collectively

Process:

- a. FORM 104b
- b. Procurement office may ask for clarification to modify an ambiguity but not modification of the proposal is allowed.
- c. No negotiation allowed
- d. Mostly binary - Could be yes/no solicitation and not a narrative description that is weighted.
- e. Best value bid evaluation factors may be defined to include, but are not limited to those listed in 11-35-1528(5)(a)-(n) and not subject to protest.

### **3.7 Competitive On-Line Bidding – Reverse Auction – 11-35-1529**

Online bidding process to achieve best value and most advantageous offers from the state. Adequate public notice of the request for solicitation must be given in the same manner as provided under competitive sealed bid (11-35-1520(3)).

Process:

- a. End user present situation
- b. Decision from Procurement Director with justification in the file to use this process
- c. Written justification required Form 104 modified ([www.Procurement.sc.gov](http://www.Procurement.sc.gov))
- d. Identify the state auction contract – third party contractor
- e. Third party assigns a project manager and assist in all required language for the on line reserve auction notice (time line, prequalification, criteria)
- f. Procurement officer posts on SCEIS
- g. Amend notice of RA to include additional dates (publish date, questions by date, submission of qualification date (replaces the open date in SCEIS) ; auction date;

- h. Notify the bidders that participate of the auction date.
- i. Before opening date and time, the procurement officer shall require bidders to register – only responsible bidders shall be registered. If less than 2 bidders are registered, the solicitation must be cancelled.
- j. Action is held at date and time specified
- k. At end the lowest bid from prequalified bidder is awarded project.
- l. Action is typically by lot
- m. If add-on requirements (add-ons), submit them after award for consideration of the procurement officer.

### **3.8 Competitive Sealed Proposals – 11-35-1530; 19-445.2095.**

Proposals shall be solicited from qualified sources, when such sources are available, through a request for proposal. A contract may be entered into by competitive sealed proposals subject to the provisions of Section 11-35-1530 and with the a written determination as required on MMO Form 104 which can be found at [www.procurement.sc.gov](http://www.procurement.sc.gov).

#### **3.8.1 Receipt of Proposals**

Proposals shall be opened publicly in accordance with Regulations 19-445.2095(c). A Register of Proposals shall be prepared in accordance with regulations promulgated by the Board and shall be open for public inspection after contract award. See example of Register of Proposal in Appendix.

#### **3.8.2 Request for Qualifications**

After receipt of the responses to the request for qualifications from prospective offerors, the prospective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two prospective offerors by means of a request for proposal. If less than two proposals are received, then the request for qualification shall be cancelled. At this time, the Procurement Manager shall make a decision to go forward with the RFP process or cancel the procurement.

The failure of a prospective offeror to be selected to receive the request for proposal shall not be grounds for protest under Section 11-35-4210.

#### **3.8.3 Evaluation Factors**

The request for proposals shall state the relative importance of factors to be considered in evaluating proposals but shall not require numerical weighting for each factor. Price may but need not be an evaluation factor. The Procurement Officer shall discuss the weight associated with each criteria with the end user to ensure appropriateness.

#### **3.8.4 Discussion with Responsive Offerors**

As provided in the request for proposals, discussions may be conducted with responsive offerors who submit proposals for the purpose of clarification to assure

full understanding of the requirements of the request for proposals. See 19-445.2095. 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.

### **3.8.5 Negotiations**

Negotiations shall occur only after proposals have been ranked and must be referred to a Procurement Manager, or his designee. See 11-35-1530(8) for changes to RFP and subsequent re-evaluation and ranking.

### **3.8.6 Award**

Award must be made to the responsive 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 procuring agency determines to utilize one of the options provided in Section 11-35-1530(8). The contract file shall 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 shall be the same as those stated in Section 11-35-1520(10).

## **3.9 Competitive Negotiations (11-35-1535)**

### **3.9.1 General**

Competitive negotiation is a process where request for proposals are solicited and evaluated followed by conducting negotiations with those proposers in the competitive range. Multiple sessions of negotiations may be conducted with one or more of the proposals at any time in the process (including concurrent discussions with proposers) culminating in either an award based on the original RFP response or the submission of proposal revisions/Best and Final Offers (BAFO) ending in award.

**Competitive negotiations may be conducted only by the State CPO.** Competitive negotiated acquisitions may be conducted only by the office of either ITMO or MMO. The Procurement Director is the designated Selection Executive (SE) for the SCDOT. The Secretary of Transportation may appoint another SE for a particular acquisition.

Competitive negotiations must comply with Regulation 19-445.2099. Documentation required by this regulation must be prepared at the time the process to be documented is conducted. MMO or ITMO may not delegate to the SCDOT the authority to conduct a competitive negotiation. MMO or ITMO shall designate the responsible procurement officer to conduct the procurement.

### **3.9.2 Developing Competitive Negotiation Package**

SE develops package and sends it to the Secretary of Transportation or designee for approval prior to sending to MMO for approval.

Package shall contain:

- a. Acquisition plan
- b. Acquisition team
- c. Evaluation factors and subfactors
- d. Data requirements
- e. Solicitation specific contract clauses

### **3.9.3 Appointment of Acquisition Team**

SE shall prepare a memorandum for the Secretary of Transportation or designee to appoint the project specific acquisition team. The SE and representative from the Legal Office shall be part of the team. Other team members are appointed as appropriate for the acquisition.

### **3.9.4 Development of an RFP**

The solicitation must be an RFP developed by the acquisition team. The SE shall invite the responsible procurement officer to each acquisition team meeting. Once developed, the SE shall send to the responsible procurement officer for approval and publication SCBO.

### **3.9.5 Amending Solicitation**

SE amend solicitation with approval of MMO. Amendments after the established time and date for receipt of proposals may not exceed the general scope of the request for proposal and must be issued to those offerors that have not been eliminated from the competitive range.

### **3.9.6 Evaluation Factors**

Price or cost shall be evaluated, unless it is eliminated as an evaluation factor by the SE with approval of the Secretary of Transportation and the reasons documented by the responsible procurement officer. If price is an evaluation factor, the solicitation must state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

Quality of the item shall be addressed in every request for proposal. Past performance shall be an evaluation factor unless its exclusion is recommended by the SE and documented by the responsible procurement officer. The SE shall ensure that the solicitation shall provide offerors an opportunity to identify past or current contracts of similar requirements. The SE shall ensure that the solicitation allows offerors to provide information on problems and corrective actions.

Relative importance of all evaluation factors and subfactors shall be stated clearly in the solicitation, but the rating method need not be disclosed nor any numerical weighting of each factor.

### **3.9.7 Evaluation Process**

Upon receipt of the proposals, the responsible procurement officer shall convene a proposal dissemination meeting to instruct the acquisition team regarding evaluation process, including the execution of the conflict of interest and procurement integrity forms. At this time, the acquisition team becomes the evaluation team and is a public body subject to the rules of FOIA. The responsible procurement officer is responsible for all FOIA public notices for the meetings of the public body.

All proposals shall be evaluated. No proposal shall be considered non-responsive. The responsible procurement officer shall document all deficiencies and weaknesses in each proposal. The responsible procurement officer shall prepare the following documents for the file:

- a. An assessment of each offeror's ability to accomplish the technical requirements; and
- b. A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

### **3.9.8 Exchanges with Offerors**

The responsible procurement officer shall control all exchanges after opening and prior to award. Clarifications may be conducted any time prior to award. Any forms of communication is acceptable.

### **3.9.9. Competitive Range**

After conducting all clarifications and before negotiations, the responsible procurement officer shall establish a competitive range. Otherwise promising offerors should not be excluded from the competitive range due solely to deficiencies that are reasonably susceptible to correction. After negotiations, responsible procurement officer may eliminate an offeror from competitive range if the offeror is no longer consider to be among the most promising. Offerors excluded must request a debriefing within 3 days of notification of elimination or waive their right to a debriefing. The responsible procurement office shall send the eliminated offeror a letter detailing the reasons for the elimination. The Proposal shall not be returned. The letter shall provide notification of debriefing deadlines.

### **3.9.10 Negotiations**

The responsible procurement officer shall participate in and control all negotiations to obtain best value. Legal and SE shall be part of the negotiations

Negotiations shall be conducted with each offeror in the competitive range. Prior to negotiations the evaluation team shall identify the pre-negotiation objectives and the responsible procurement officer shall document them. Negotiations shall identify and seek the correction of any deficiency and eliminate any other undesirable term in an offer. If necessary, the responsible procurement officer may amend the solicitation to change or relax material requirements. Scope shall not be changed. Negotiations may be held multiple times or sessions with a particular offeror and does not require the conduct of multiple sessions with other offerors. Negotiations may include changes to allow enhancements and other improvements to their offer.

### **3.9.11 Best and Final Offers (BAFO) /Proposal Revisions**

Upon completion of negotiations, proposal revisions may be allowed or requested by the responsible procurement officer from competitive range offerors to clarify and document understandings reached during negotiations, or to provide offeror an opportunity to respond to an amendment. The responsible procurement officer is responsible for preparation of the BAFO notice instructions and request to the competitive range proposers.

The notice of BAFO shall include:

- a. A cut-off date and time shall be identified by the procurement officer to submit the BAFO/proposal revisions.
- b. The proposal revision may include revisions to any aspect of the offer.
- c. If no revision is submitted, the last prior offer may be considered.
- d. In writing and award shall be made without obtaining further revisions

Upon receipt of the revised proposals (BAFO), the evaluation team will be reconvened by the responsible procurement officer to evaluate and score the proposals. Clarification and communication is allowed to be conducted, but no further negotiations or revisions to proposals are permitted. Final ranking shall be documented by the responsible procurement officer.

### **3.9.12 Tradeoff**

Tradeoff may be conducted if award to other than the lowest price offeror or other than the highest technically rated offeror is in the best interest of the state. The tradeoff to award to the best value shall be conducted by the evaluation team and responsible procurement officer. The responsible procurement officer shall quantify the cost/benefit rationale for allowing award under a tradeoff. The Secretary of Transportation must approve the tradeoff award.

### **3.9.13 Award**

The contract file must document who performed the functions of evaluation, tradeoffs and award and which functions they performed.



## CHAPTER 4. NON-EXEMPT PURCHASE ORDERS

### 4.1 General

Purchase Orders encumber funds. Purchase Orders are issued to cover all purchases by the Department for material, supplies, equipment, and services not otherwise covered by Direct Payments (see Part 2, Chapter 9, Section 9.6), Procurement Cards, or other forms of contracts (vertical building construction and professional services contracts). The Purchase Order is the conventional form of contract to be used when procedures do not prescribe another form of procurement. Purchase order type will follow the State of South Carolina Policy for Use of Purchasing/Payment Document Type,

All purchase orders are to be created in the field, except for sole source procurements. All contract purchases must be on purchase orders. Do not put contract and non-contract items on the same purchase order.

If contract is exempt, use the Exempt Purchase Order procedures, under the Exemption section of the Manual.

On all purchase orders not connected to a contract created in the field, the procurement office must add the South Carolina Purchase Order Clause Set which can be found at:

<https://procurement.sc.gov/files/2.0.2%20PUBLISH.pdf>

Adjustments to purchase orders can be made by the as follows:

- a. must attach email or other written documentation from 1st level approver.
- b. must type reason in internal Notes on Overview tab
- c. if a purchase order is increasing – approval is required

Comptroller General Policy for Use of Purchasing/Payment Document Type:

Purchase Order types:

- a. ZSTD (Standard)
- b. ZEMR (Emergency) – needs documentation
- c. ZEXP (Exemption)
- d. ZSOL (Sole Source)
- e. ZUNA (Unauthorized) - discuss with HQ
- f. ZBLT (Blanket)
- g. ZBEM (Blanket Emergency)
- h. ZBEX (Blanket Exemption)
- i. ZBPO (Blanket Agreement) – discuss with HQ buyer
- j. ZBSS (Blanket Sole Source)

## 4.2 **Blanket Purchase Order and Blanket Purchase Agreements**

### **4.2.1 Blanket Purchase Orders (BLT)**

Use Blanket Purchase Orders when a quantity and/or price is unknown. You may also use the Blanket Purchase Order if you want to track dollars ONLY. Blanket Purchase Orders are not possible on most contracts.

Blanket Purchase Orders (BLT) may be used when there is an indefinite price and indefinite delivery. Blanket Purchase Orders shall list the current contract number, authorized callers, dates for which the Purchase Order will be effective.

Each Blanket Purchase Order will run concurrent with the fiscal year. A new Purchase Order shall be issued for each concurrent fiscal year (July 1) of the contract when renewals are allowed.

Process:

- a. End user consult District or County to determine if they want to track dollars versus quantity. There is no way to determine the number of goods or quantity under a BLT. It is based on dollar value. BLT only tracks dollars.
- b. End user determines if statewide contract or agency term contract exists for the goods and services – check SCIES or HQ – search vendor or contract type.
- c. End user determines if the contract is exempt or non-exempt
- d. Blanket PO “ZBLT” purchase orders are issued for these purchases.

### **4.2.2 Blanket Purchase Agreements (BPO)**

Blanket purchase agreements are for non-contract purchases ONLY. The procurement officer must have at least two sources of supply. The end user must discuss the purchase with the HQ buyer prior to issuance.

Blanket Purchase Agreements (BPO) may be used for small quantities of unanticipated miscellaneous items. Blanket Purchase Agreements (BPO) may be used **when there is no current Agency or State Wide Term Contract in place**. BPO's must be placed concurrently with more than one supplier. Divisions, districts, or counties shall submit shopping carts identifying the vendors of their choice for each type of blanket agreement. Each vendor will have their own Blanket Purchase Agreement and Field and Headquarters personnel will be required to rotate purchases between the established agreements. **Blanket Purchase Agreements cannot exceed \$10,000 with the maximum call amount of \$2,500 and a list of authorized callers**. Blanket Agreement PO “ZBPO” purchase orders are issued for these purchases.

Blanket Purchase Agreements shall be established for each fiscal year and must be terminated at the end of the fiscal year or when funds expire. New Blanket Purchase Agreements will be set up at the beginning of each fiscal year.

All Blanket Purchase Agreements shall be administered in accordance with Chapter 19 of the Rules and Regulations of the 1976 South Carolina Code of Laws, Article 4, 19-445.2100, Subsection E. Establishment of Blanket Purchase Agreements.

#### **4.2.3 Sole Source Purchase Orders**

- a. If under \$10,000, not a sole source; follow small purchase process.
- b. product of service available from only one source
- c. Source is the sole manufacturer/service provider and distributor
- d. PO must be processed by Headquarters procurement
- e. Request approval by Deputy Secretary of Finance and Administration or his designee
- f. if over \$50,000, an intent to sole source posed in SCBO for 5 business days.
- g. If over \$250,000, an intent to sole source posted in SCBO for 10 business days.

#### **4.2.4 Compliance Notes**

- a. The solicitation of all written quotes shall be distributed equitably among qualified suppliers.
- b. Contracting authority does not exist until a Purchase Order number or Procurement Card number has been given to the vendor; or receipt of the Purchase Order by the vendor. Any other form of notice to proceed will be considered unauthorized except that procurements processed under the guidelines of the State Engineer permit the issuance of a notice to proceed.
- c. Written quotes shall contain the following information when submitted to Procurement Office for processing:
  - i. Vendor's name, address and phone number
  - ii. Price quoted including freight and/or delivery charges
  - iii. Signature of person quoting
  - iv. Date of quote
  - v. Description of goods and services being purchased
  - vi. Quantity(ies) and unit(s) of measure
  - vii. Delivery schedule

## CHAPTER 5: NON-EXEMPT EMERGENCY PURCHASES

### 5.1 General

Emergency purchases applies to purchases \$10,000 or greater. Anything under \$10,000 is a small purchase and no advertising is necessary.

An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of floods, tornadoes, hurricanes, fire, epidemics, riots, critical equipment failure or such other reason as may be proclaimed or declared by the Governor, the Secretary of Transportation, Deputy Secretary of Engineering, or Deputy Secretary for Finance and Administration. **Written declaration or proclamation is required signed by appropriate official. Justification must be signed by the Procurement Director.** The existence of such conditions must create immediate and serious needs, which, if delayed by the normal and required procurement process, would jeopardize the function of the Department, the preservation and protection of property, and the safety or health of individuals.

Emergency procurements shall be limited to items or services required to meet and alleviate the emergency as economically or practical as possible. A written justification shall be made stating the basis of the emergency and the selection of the particular vendor/contractor.

### 5.2 Process

#### 5.2.1 Field and Headquarters

- a. Emergency determinations
- b. Impending emergency: Determination is made by declaration of an emergency either through the President, the Governor or the Secretary of Transportation or designee (*the Secretary of Transportation has delegated signature authority to the Deputy Secretary for Engineering or the Deputy Secretary for Finance and Administration*), or MMO Chief Procurement Officer. Obtain a copy of the emergency determination or declaration.
- c. Immediate action: Determination is made by the highest level employee (in district or county – RME, Assistant RME, DME or Assistant DME or equivalent) and later will obtain an affirmation of the emergency from the deputy secretary. Email from RME is sufficient; phone call from district is sufficient if followed up by written documentation as soon as possible.
- d. If there is an emergency after normal working hours, the highest level employee as in (b) above.
- e. **If the value of the contract is in excess of \$50,000, notice of the award must be posted in SCBO as soon as practicable after**

**execution of the contract. The post must contain the protest provision.**

**5.2.2 Seek competition, if possible**

At whatever level of emergency, obtain seek as much competition as is practical under the circumstances to alleviate the emergency situation.

- a. Follow standard procurement rules for purchases up to \$10,000, if practicable.
- b. There is no dollar limitation, however purchases over \$50,000 must include the Drug-Free certification.

**5.2.3 Provide written determination**

Complete MMO Form 103 – (www.Procurement.sc.gov) - Written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

**5.2.4 Not Full Repair**

Only procure the items necessary to alleviate or mitigate the emergency. A full repair is not the objective. Example, aggregate to patch road, not repaving of road.

**5.2.5 Shopping Cart and Submission**

Attach items 5.2.1 above to the shopping cart and submit. If after hours, the Chief Procurement Officer of SCDOT or the Procurement Director shall be contacted as soon as possible to begin the Emergency procurement process. After hours numbers for Procurement Emergencies is 1-803-260-9784.

**5.2.6 Emergency Required Reporting**

The Procurement Director is responsible for preparing quarterly reports of emergency procurements and submitting them to the Contracts and Special Projects Administrator, and the Materials Management Office in SFAA. Procurement Specialist is required to report these type purchases to the Materials Management Office by the last business day of the month following quarter close. Such reports are due no later than the last day of the month following the end of the quarter. (If quarter ends in September, must be submitted by last business day of October, January, April or July). The reporting is accomplished under Audits Quarterly Reporting on the SFAA website (Procurement.SC.gov). The report will be subject to review by the SFAA, the House Ways and Means Committee, and the Senate Finance Committee

## **CHAPTER 6: NON-EXEMPT SOLE SOURCE PROCUREMENTS**

## **6.1 General**

Sole Source procurement applies to purchase \$10,000 or greater. Anything under \$10,000 is a small purchase.

Sole source procurement is not permissible unless there is only a single supplier. The following are examples of circumstances that could necessitate sole source procurements:

- a. Where the compatibility of equipment, accessories, or replacement parts is of paramount consideration;
- b. Where a sole supplier's item is needed for trial use or testing; or
- c. Where the item is one of a kind.

## **6.2 Process for the field offices and in headquarters**

- a. Complete form 102 – sole source justification form.
- b. Letter from manufacturer or service provider that item or service is a sole source – single supplier of item or service.
- c. Quote from the manufacturer or service provider
- d. If over \$50,000, then need to complete the drug free workplace certification form.
- e. If over \$50,000 and up to \$250,000, notice of intent to award must be published for 5 BUSINESS days in SCBO. If the purchase is over \$250,000, must post in SCBO for 10 BUSINESS days before entering contract.
- f. Concurrence memo should be on SCDOT office letterhead and address to director of procurement. The memo is a restatement of form 102 but with more detail to provide justification in memo form prior to form 102 being signed by the Deputy Secretary.
- g. Attach a-f to the shopping cart a sole source determination along with a completed Sole Source Justification Form (MMO 102) shall be forwarded to the Procurement Office for review before a determination can be made.'
- h. The Procurement Specialist I or II receives the justification and determination. The Specialist researches the appropriateness of the sole source request. The Procurement Officer will review the request, investigate to ensure the Sole Source request is valid. If not valid, the sole source request is routed back to the originator to follow the appropriate process for the dollar amount.
- i. Forward for appropriate approval signature. The Secretary of Transportation has delegated signature authority to the Deputy Secretary for Finance and Administration for sole source approval.

## **6.3 Sole Source Reporting Requirements**

In accordance with the State Procurement Code, determinations for sole source and emergency procurements made for the South Carolina Department of Transportation will be reported to the Materials Management Office, SFAA. Such reports are due no later than

the last day of the month following the end of the quarter. (If quarter ends in September, must be submitted by last business day of October). The reporting tool is accessed under Audits/ Quarterly Reporting on the SFAA website ([www.procurement.sc.gov](http://www.procurement.sc.gov)). The report will be subject to review by the SFAA, the House Ways and Means Committee, and Senate Finance Committee

#### **6.4 Approval Authority for Determination**

For the purpose of establishing a management approved authority, the Secretary of Transportation or authorized designee shall approve all Sole Source and Emergency procurements for the Agency. Review of Determination of Findings regarding all Sole Source and Emergency procurements shall be completed by the appropriate Procurement Manager who will research the validity of the Sole Source request and present findings to the Director of Procurement for Commodities and Services, then forward to the Agency Secretary or designee for approval.

## **CHAPTER 7: PROCUREMENTS AT AUCTIONS – 11-35-1570**

SCDOT having knowledge of an auction or sale of supply from a bankruptcy may elect to participate. SCDOT shall (a) survey the needed items being offered at an auction to ascertain their condition and usefulness, (b) determine a fair market value for new like items through informal quotes, (c) determine the fair market value from similar items considering age and useful life, and (d) estimate repair cost and delivery cost, if any, of the desired item. Using this information, SCDOT shall determine the maximum price that it can pay for each item desired. At the auction or sale, SCDOT shall not exceed the maximum price so determined. Consult Procurement Director prior to proceeding.

## **CHAPTER 8: PURCHASES EXCEEDING \$500,000**

All individual awards of \$500,000 or more must go through the Secretary of Transportation for approval.

All contractors who have been awarded \$500,000 in contracts within the Fiscal Year (FY) must have every contract thereafter go to the Secretary of Transportation for approval regardless of amount.

Purchases exceeding \$500,000 for construction (excluding road and bridges) shall be forwarded to MMO/OSE for appropriate procurement. Construction contract change orders that exceed \$100,000 of the initial construction contract, aggregate amount, will be forwarded to MMO/OSE for approval. Architect/Engineering (A/E) contract amendments that exceed \$25,000 of the initial A/E contract, aggregate amount will be forwarded to MMO/OSE for approval. Examples of construction include (1) section shed, (2) mitigation bank, (3) new bathroom facility at rest areas, etc.

## **CHAPTER 9: POST AWARD CONTRACT ADMINISTRATION NON-EXEMPT PROCUREMENTS**

### **9.1 Contract administration**

- a. Address all issues submitted to the procurement officer by the end user for modifications, renewals, complaints see the Contract Administration Manual by MMO at [www.procurement.sc.gov/general/reference-room](http://www.procurement.sc.gov/general/reference-room)
- b. Document all issues
- c. If items of complexity, seek SCDOT legal counsel advice
- d. Do not discuss procurement issues with any outside attorney without presence of SCDOT legal staff
- e. Decisions on termination require director of procurement concurrence.
- f. End user pays the invoices and tracks goods receipts.
- g. Auditing is performed by accounting

### **9.2 Change Orders**

A change order is the process by which the Procurement Office alters or changes the terms and/or conditions of a contract. The Procurement Manager and/or his designee are the only individuals authorized to initiate change orders. See 11-35-310(5); 19-445.2143(C).

#### **9.2.1. Process**

- a. Change orders will be handled administratively by written correspondence from the end user notifying a headquarters procurement manager and submitting documentation reflecting the request change.
- b. Procurement office attaches in the contract file and all other appropriate files and through the SCEIS system, the necessary change
- c. All change orders are initiated by the Procurement Office by creating the change order and sending it for signature. See [www.procurement.sc.gov](http://www.procurement.sc.gov) for sample change order form. If it is a procurement delegated to SCDOT by MMO, the change order may need to be reviewed by MMO prior to execution depending on delegation terms.
- d. Change orders are first signed by the vendor and then the procurement officer.
- e. After the change order is fully executed, the procurement officer files it with the contract. Send a copy of the countersigned change order to the vendor.
- f. All change orders are to be reviewed by the Procurement Director or designee.

NOTE: To determine if a change is “material”, consult SCDOT Director of Procurement.

### **9.3 Modifications (11-35-310)**

Modifications are additional changes to contract without the consent of the contractor, i.e. new legislation mandate changes to contract criteria, policy directive, etc. Use of modification is limited and only upon approval of Director of Procurement.

### **9.4 Receipt of Goods and Services**

Goods or services are received at locations throughout the State at District, County or Headquarters locations. Receipts are created through the SCEIS system in MIGO. The system receipt and any other documentation received (such as packing slips or invoices) should be scanned in and attached to the electronic file in SCEIS.

### **9.5 Payment for Goods or Services**

- a. End user shall compare the vendor invoices to the purchase order for verification of the cost and services
- b. Upon verification, end user prepares a goods receipt (SCEIS) and sends the invoice with the goods receipt number and purchase order number notated on the invoice to SCDOT accounts payable office.
- c. End user shall process the invoice verification and submission to the SCDOT accounts payable office within ten work days of receipt of the invoice.
- d. The typical turnaround time by the accounts payable office is 15 work days.
- e. Pursuant to Section 11-35-45, all invoices for payment of goods and services shall be delivered (scan and send by email) to the Comptroller General's Office within 30 work days following their delivery and acceptance of the goods or services and receipt of a correct invoice. After the 30th business day, interest not to exceed 15% per annum shall be paid on any unpaid balance if it is stated on the invoice by the vendor that unless paid within 30 working days additional interest will apply.
- f. Accounting audits for payment when the following items are received:
  - Receipt through SCEIS in MIGO, and
  - An original correct invoice.

### **9.6 Direct Payments**

- a. Direct payments shall be approved by the person responsible for making the purchase and the individual who is authorized to approve for the field location. Direct Payments will be verified by accounting personnel to assure compliance with the *State of South Carolina Policy for Use of Purchasing/Payment Document Type*, implemented 2/25/2014.
- b. Direct Payments are payments made through SCDOT Form 608. Form is located on Electronic forms 2010 website.

- c. Follows the procedures for Direct Payment outlined in the *State of South Carolina Policy for Use of Purchasing/Payment Document Type*, issued 2/25/2014. Updated quarterly. See website: [www.CG.SC.Gov](http://www.CG.SC.Gov). Accounting will ensure that the policy is followed by the Agency.
- d. The Direct Pay is a financial payment transaction and is used for a direct payment to a vendor for the purchase of certain goods and services in limited circumstances, i.e. payment for conferences, fees, training, etc. The Direct Pay process should be used only when the purchase order method is not practicable because the use of Direct Pay limits reporting data necessary for spend analysis by the State and Agency. It should not be used as a matter of convenience as it leads to the reduction in controls and approvals. The categories below serve as a guide for the use of the Direct Payment method. Goods or services not included in the categories below must be purchased via a purchase order. The improper use of Direct Payments may lead to limitations on an Agency's ability to use Direct Payments.
- e. A Direct Pay is a payment method only. It does not establish compliance with the State Procurement Code and Regulations or other State regulations.
- f. Items subject to direct pay, see, the *State of South Carolina Policy for Use of Purchasing/Payment Document Type*, issued 1/1/13. See <https://cg.sc.gov/sites/default/files/Documents/Guidance>

## **9.7     Vendor Performance Information**

Vendor performance information concerns the effectiveness of a vendor in meeting the requirements of the contract or purchase order. These procedures should be applied to all types of performance problems (delinquencies, substitution of items, poor performance, items of inferior quality, partial shipments and other deviations from specifications or the terms and conditions of a contract or purchase order).

**All performance problems shall be directed to the Procurement Office in writing. After receipt of the written complaint, the Procurement Office will follow procedures as outlined below:**

- a. The Field Office will make initial contact with the vendor to attempt to remedy a performance problem. Notes and other documentation should be retained. If unsuccessful, the field officer will contact the Procurement Office at headquarters relative to the problem and

reconciliation efforts for review. The Procurement Office researches and provides guidance to resolve the matter and may step in as needed.

- b. If the initial attempts are unsuccessful a Vendor Complaint Report, Non Compliance Notice, or a formal letter will be completed by the appropriate Procurement Manager and approved by the Director of Procurement for Commodities and Services.

Process:

1. Send the original to the vendor.
2. Retain a copy for the Department's file.
3. Attach a narrative of actions taken to date and document final outcome.
- c. The vendor is to respond in writing to the SCDOT within ten (10) calendar days or as otherwise specified. If the Procurement Manager has not received a response from the vendor within ten (10) calendar days. They should take the next appropriate action to resolve the matter.
- d. If the response by the vendor through the vendor complaint process is timely and appears to be reasonable, no additional action will be taken by the Procurement Manager. However, if SCDOT does not agree with the vendor's response/action, SCDOT should take the next course of action. If the situation cannot be resolved, the Procurement Manager will initiate additional actions which may include "Cure" and "Show Cause" letters. A period of ten (10) to sixty (60) days may be required to remove the contractor. The Procurement Manager will advise the affected agency Department of the action taken.
- e. Compliance Note: It is very important that during the course of mediation with the vendor that communication be restricted to the Procurement Manager. The Procurement Manager must keep the affected agency Department informed of actions taking place and obtain concurrence for resolutions being considered. The Procurement Manager needs to ensure that the appropriate level of management within the Department is informed of the decision and allowed to participate in any contract controversy, if necessary. Communication made outside of the Procurement Office could compromise settlements being made by the Department.

## **9.8 Quality Assurance**

In an effort to ensure that those commodities or services procured by this Agency are in compliance with the Department of Procurement and/or State Procurement terms and conditions and standards, the receiving person should inspect and communicate any discrepancy or damage to the appropriate Procurement Manager. They along with

Division or District procurement personnel are responsible for handling and monitoring terms and conditions of such contracts.

Most agreements have terms and provisions detailing the requirements of quality assurance.

### **9.9 Receipt of Damaged goods**

All shipments and deliveries shall be inspected closely for damage. Any evidence of damage or shortage is to be noted on the shipping documents and/or freight delivery receipts. Do not sign delivery receipts without noting shortage or damage. Immediately notify the appropriate Buyer. Shipping documents are to be signed and dated by the carrier. Retain any packaging material associated with the damaged item(s). In the event of damage it is appropriate to request an inspection from the carrier. The receiving party should forward copies of any document to Procurement who will then handle any damages that cannot be satisfied through the requester level.

## PART 3 – OTHER NON-EXEMPT PROVISIONS

### **1.1 Disposition of State/Departmental Property (Reg. 19-445.2150).**

This section covers the procedures to be followed whenever State/Departmental property is sold, transferred to another governmental entity or junked.

#### **1.1.1 Purpose**

The sale, transfer or junking of any State/Departmental property of a fixed asset nature (tagable SCDOT equipment which custodian is responsible for), excluding real estate, must be coordinated by the Director of Supply and Equipment. Requests then will be forwarded to the SCDOT Procurement Office or coordinated through the Department of Administration, Surplus Property Office.

All State/Department owned fixed asset equipment, non-accountable scrap, and scrap metal shall be disposed of by means of transfer to Surplus Property Office, junk or scrap sale, or disposing of in a proper landfill. Request for disposal authority are to be made on Request for Authority to Dispose of Accountable Property, SCDOT Form 3024. Under no circumstances can material be given to anyone.

#### **1.1.2 Procedures**

- a. The Supply and Equipment Section will be responsible for the handling of the requests for disposal by sale, transfer, or any other means of disposal of all property in possession of the Department.
- b. The Procurement Office will be responsible for maintaining all records in relation to the sale, transfer or disposal of State/Departmental property.

### **1.2 Trade-In Sales (Reg. 19-445.2150(G); SC Code 11-35-3830)**

As required by the Code and those regulations implemented thereof, any governmental body may trade-in property. The trade-in value of which may be applied to the purchase of new like items.

The Agency may trade-in property, whose original unit price did not exceed \$5,000. The trade-in value must be applied to the purchase of new like items. When the original purchase price exceeds \$5,000, SCDOT shall refer the matter to the Surplus Property Management Office, the ITMO, or the designee of either, for disposition.

As required, all trade-in sales must be reported quarterly to the Materials Management Office listing all three-value areas.

### **1.3 Information Technology Plan**

As required by Section 11-35-1580 of the State Procurement Code, the South Carolina Department of Transportation submits a statewide Information Technology Plan for

approval each year by October 31st to the Information Resources Management Office. This plan is filed and available for review in Data Processing and the Procurement Office.

#### **1.4 Information Technology Procurements**

**“Information Technology”** means data processing, telecommunications, and office systems technologies and services.

- a. **“Data Processing”** means the automated collection, storage, manipulation and retrieval of data including central processing units for micro, mini and mainframe computers; related peripheral equipment such as terminals, document scanners, word processors, intelligent copiers, off-line memory storage and printing systems, data transmission equipment; and related software such as operating systems, library and maintenance routines and applications programs.
- b. **“Telecommunications”** means voice, data, message and video transmission and includes the transmission and switching facilities of public telecommunications systems, as well as operating network software.
- c. **“Office systems technology”** means office equipment such as typewriters, duplicating and photocopy machines, paper forms and records; microfilm and microfiche equipment and printing equipment services.
- d. **“Services”** means the providing of consultant assistance for any aspect of information technology systems and networks.

Proposed procurements in the area of Information Technology shall be addressed as follows:

- a. The Data Processing Office shall develop a three (3) year IT plan. The plan will forecast and project proposed information technology procurements.
- b. The Department’s Data Processing Manager shall send planning documents to the various Departments and Districts prior to the annual budget planning process by.
- c. The Department Heads and District Engineer Administrators disburse the planning documents to the various concerned individuals for forecasting IT needs.
- d. The completed planning documents are returned to the Data Processing Manager for compilation and review.
- e. The Data Processing Manager reviews the requests and makes recommendations to the Deputy Secretary of Construction,

Engineering, and Planning and the Deputy Secretary of Finance and Procurement.

- f. The IT Plan is sent to the Office of Information Technology Management for review when approved by the Secretary of Transportation and funding sources are verified by the Deputy Secretary of Finance and Procurement.
- g. The IT Plan is returned to the Department prior to the start of the fiscal year of the approved plan.
- h. A copy of the approved IT plan is sent to the Director of Procurement for Commodities and Services.
- i. A departmental shopping cart must be prepared as outlined in this manual.
- j. All IT shopping carts must have specific approval by the appropriate supervisory personnel before the procurement process can begin.
- k. All IT shopping carts are to be sent to IT Services for review and approval.
- l. IT Services will forward IT shopping carts to Procurement for processing once assurance has been made that items being requested are on the IT Plan. If items greater than \$50,000 are not on the IT Plan, requester must send “Procurement Request Form”.
- m. Requests for Information Technology equipment not in excess of \$100,000 will be processed by the Division of Procurement and those over \$100,000 will be sent to Information Technology Management Office for procurement.
- n. Miscellaneous Information Technology Equipment may be purchased on a Procurement Card if under \$500. Examples of miscellaneous items are as follows: mouse, mouse pads, printer/modem cable, laser toner cartridges, surge protectors and battery for PC. Questions regarding items that may or may not be allowed shall be addressed to the Information Resource Coordinator at 737-1024.
- o. **Software may not be purchased without approval from IT Services. All software must be submitted through a shopping cart to IT Services.** Any exception must be approved by calling the Information Center Manager at 737-6367.

- p. Personal computers and printers may be repaired locally if the cost is under \$500. Charge code 286.6117.060 should be used for these repairs. Call the Information Resources Consultant at 737-1741 with the estimated repair cost if the repair estimate is over \$500. A decision will be made to repair locally, repair in Columbia, or replace. SCDOT IT Services will fund replacement if no other funds are available.

### **1.5     Auditing Services for Non-Exempt Procurements**

All requirements for auditing services and accounting services must obtain approval for such services from the State Auditor's Office prior to award.

### **1.6     Leasing Real Property/Equipment (Reg. 19-445.2152).**

Any such leasing of real property and/or equipment will be handled by the Secretary of Transportation or their designee in accordance with the State Procurement Code.

- a. If SCDOT proposes to enter into an agreement other than an outright purchase, it is responsible for justification of such action
- b. Lease, lease/purchase, installment purchase, or rental agreements are subject to this regulation.

### **1.7     Furniture Purchase Reporting (11-35-450)**

The purchase of furniture, floor coverings, or any other decorative or ornamental item by SCDOT for at least one of the following uses must be reported to the SCDOT Commission, when the cost of the furniture covering or item exceeds one thousand dollars (\$1,000), before the purchase is made:

- a. In an office or adjoining reception area utilized by the Secretary of Transportation or Deputy Secretaries.
- b. In a SCDOT Commission room or a conference room used as a SCDOT Commission room.
- c. The reports required in subsection (1) must include the item to be purchased and its price. Upon receiving the reports, the SCDOT Commission formally shall approve or disapprove the purchase.

### **1.8     Procurements from Prison Industries (11-35-710; 24-3-330; 24-3-340)**

The State Procurement Code exempts any procurement made from Prison Industries effective July 1, 1995 (See exemption at [www.procurement.sc.gov](http://www.procurement.sc.gov)). The exemption allows for any governmental body to make procurements directly from Prison Industries outside of the requirements of the Code. Procurements from Prison Industries shall be made if the products offered by Prison Industries meet SCDOT needs as defined by the specifications of the procurement. There are certain circumstances that would allow for procurements from vendors other than Prison Industries and are as follows:

- a. If the price of the items available from Prison Industries is higher than the prices available commercially, then normal procurement methods would apply.
- b. If delivery requirements cannot be met; however, delivery requirements must be reasonable.
- c. If the quality of the items being procured is not equal, then the normal procurement methods would apply.
- d. If the items must be compatible to match existing items, then normal procurement methods would apply.

Documentation must be made explaining the basis for not utilizing Prison Industries.

The Office of Audit and Certification will begin monitoring State Agencies' procurements of products available from Prison Industries effective July 1, 1995.

### **1.9     Food Service Contracts**

Any food service contracts shall be solicited by MMO under 11-35-1530 (competitive sealed proposals) and Reg. 19-445.2095.

## PART 4 – EXEMPT PROCUREMENTS

### 1.1 Exempted from State Procurement Code

Purchases of goods and services, except for construction and maintenance of highways, roads and bridges, which have been determined to be exempt by the SFAA shall be made in accordance with the State Procurement Code, with the exception of the below provisions. Exemptions are maintained and updated in the Procurement Office at Section 11-35-710 and list on the MMO website at:

[https://procurement.sc.gov/files/20130103\\_Exemption\\_Table](https://procurement.sc.gov/files/20130103_Exemption_Table)

### 1.2 Items Subject to Exemption

Those items exempt will be processed in accordance with Code regulations and include but are not limited to:

- Disaster Recovery (833 Program) purchases
- Construction, maintenance, and repair of bridges, highways, and roads;
- Vehicle and road equipment maintenance and repair;
- Emergency-type parts or equipment utilized by the Department of Transportation
- Conference sites
- Fuel cards
- Gifts of \$100,000 or less
- Grant awards
- Interagency agreements
- Motion picture agreements
- Purchase of prison industry raw materials, sales, and services
- Professional dues and registration fees
- Attorney services
- Appraiser services
- Auditor services
- Court reporters
- Expert witnesses
- Software licenses after such software has been competitively bid

### 1.3 Exempt Purchase Orders

If a contract is exempt under provisions of 11-35-710(1), use the exempt purchase order. Examples would be for repairs to vehicle and road equipment under a state or SCDOT contract. Another example is services within the Right of Way (ROW): tree trimming under contract, chemical brush management, mowing, etc.

Process:

- a. HQ written permission, which should be attached to the purchase order
- b. competition will be sought

- c. If a vehicle or equipment repair is over \$10,000, procurement officer must obtain the approval of the Director of Supply and Equipment
- d. Obtain an hourly labor rate BEFORE sending for diagnostics
- e. Estimate number of hours
- f. Cost of getting equipment to and from repair location should be considered

#### **1.4 State Procurement Contract Provision that do not apply**

Purchases that have been determined to be exempt by the SFAA shall be made in accordance with the State Procurement Code Section 11-35-710, with the following exceptions:

- Protest procedures (use Exempt Protest procedures)
- Small purchase procedures (informal quotes or purchases less than \$10,000)
- No preferences

Exempt Procurements are determined by the Procurement Director or their designee in the Procurement Office of Commodities and Services prior to the Exemption being applied.

#### **1.6 No Brand Name Specifications if Federally-Funded**

For federally-funded projects, the use of patented or proprietary products often involves making a sole-source selection within the contracting process. FHWA discourages product trade names within your project's specifications, FHWA requires that a reasonable number of branded products be represented and allow equally suitable products that are not specifically named. The words "or equal" should always be added within the specification to ensure the broadest range of options. This means instead of specifying a Coke by Coca-Cola®, you allow competing and generic brands by specifying "a Coke, Pepsi, or equal cola beverage."

#### **1.8 Protest Procedures for Exempt Procurements**

Exempt procurement shall follow SCDOT's Protest Procedures.

##### **1.8.1 Protest**

###### ***Limitation on Protest:***

For procurements or contracts under \$50,000, remedies and rights to protest are not available. 11-35-4210

###### ***Grounds for Protest:***

Protest of Contents of Solicitation (Invitation For Bids or RFPs or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue): Any Proposer who is aggrieved in connection with a solicitation document shall file a written protest to SCDOT's Chief Procurement Officer (CPO), PO Box 191, Columbia, SC 29202, within fifteen days of the date of posting of the solicitation, RFQ, RFP, or other

solicitation document or any addendums to it on the SCDOT design-build website. For purposes of computing the days, the day of the act, event, or default from which the designated period of time begins to run is not to be included.

***Protest of Short-listing:***

Any Protestant who is aggrieved in connection with the selection of short-listed Proposers shall file a written protest with the CPO within seven business days of the date the short-list is posted on SCDOT design-build website. Any matter that could have been raised pursuant to the Protest of Contents of Solicitation, section above, may not be raised as a protest of the selection of the short-list. The number of Proposers short-listed is not grounds for a protest.

***Protest of Award:***

Any Protestant who is aggrieved in connection with the award of the contract shall file a written protest with the CPO within seven business days of the date the Request to Award memorandum is posted on SCDOT design-build website. Any matter that could have been raised pursuant to the protest of contents of solicitation or short-listing, section above, may not be raised as a protest of award.

***Exclusive remedy:***

The rights and remedies granted in this section to Proposers, either actual or prospective, are to the exclusion of all other rights and remedies of Proposers against the SCDOT.

***Failure to file a timely protest:***

Protestant fails to request a protest within the seven business days, the short-list and award shall be final

### **1.8.2 SCDOT Procedures for Protest**

***Protest:***

A protest must be in writing, filed with the CPO, and set forth the grounds of the protest and the relief requested with enough specificity to give notice of the issues to be decided. The protest must be received by the CPO within the time provided.

***Burden of Proof:*** The protestant bears the burden of proving the validity of the protest or claim against the SCDOT.

***Duty and Authority to Attempt to Settle Protests:***

Before commencement of an administrative review, the CPO, or a designee of the CPO, may attempt to settle by mutual agreement a protest

of an aggrieved Protestant, actual or prospective, concerning the solicitation, short-listing, or award of the contract. Any settlement reached by mutual agreement shall be approved by the CPO.

***Administrative Review and Decision:***

If, after reasonable attempt, a protest cannot be settled by mutual agreement, the CPO, or a designee, shall promptly conduct an administrative review. The CPO shall commence the administrative review no later than five business days after a reasonable settlement attempt and shall issue a decision in writing within five business days of completion of the review. The decision must state the reasons for the action taken. The decision shall include findings of fact and conclusions of law, separately stated. A copy of the decision along with a statement of appeal rights set forth below must be mailed or otherwise furnished immediately to the protestant.

***Finality of Decision and Appeal:***

The SCDOT's decision pursuant to the above paragraph is final and conclusive. A person adversely affected by the final decision can appeal to circuit court and hereby waives a trial by jury regarding any protest arising out of this procurement and any such trial will be a non-jury trial before the South Carolina Circuit Court in Richland County.

***Stay of Award:***

The contract award is stayed until issuance of a final decision by the SCDOT. Once a final decision is issued, the filing of a petition to appeal that decision does not stay enforcement of SCDOT's decision to award the contract.

## 1.9 Auditing of Exempt Procurements

### 1.9.1 If federal funding:

- (a) The Single Audit process applies at the program level.
- (b) Federally assisted grants, and contracts under those grants, are currently covered by 2 CFR 200, referred to as the "Supercircular", formerly 49 CFR 18 – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (referred to as the Common Rule).
- (c) Statutory requirements relating to contracts for highway construction or architect/engineering (A/E) associated with a FA highway project must follow the applicable statutory and regulatory procurement requirements in titles 23 U.S.C. and CFR.
- (d) Currently if the subrecipient is a non-profit organization, the grant must comply with the requirements of 2 CFR 200- *Uniform Administrative Requirements for Grants and Agreements with*

*Institutions of Higher Education, Hospitals, and other Non-profit organizations.*

**1.9.2 If state-funded:**

Audits of state-funded contracts occur during the regularly scheduled state certification audit.

**1.10 Post Award Contract Administration**

See post award contract administration from non-exempt process.

## APPENDIX

1. Pre-Solicitation Check List
2. Register of Proposal Example

## 1. PRE-SOLICITATION CHECK LISTS

Attach a completed and signed checklist to ALL Procurements estimated over \$100,000 in Notes and Attachments

Checklist for Procurements over \$100,000

- Documentation to satisfy Audit
- Market Research
- Connected to 10 Year Plan or other planning document (narrative attached)
- Communications with industry (emails)

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Signature

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Date

Attach a completed and signed checklist to ALL POs in Notes and Attachments

Checklist for Procurements between \$10,000 and \$25,000

- Copy of Written request sent to at least three vendors who can supply
- Three written, responsive and responsible quotes received OR advertised in SCBO
- Written Quotes tabulated on Form 3085
- Form 3085 and written quotes attached to shopping cart

If advertised in SCBO, responses attached to RFx and PO in Notes & Attachments

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Signature

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Date

Checklist for Procurements between \$25,000 and \$100,000

- At least one quote attached to shopping cart
- Scope of Work/Specification attached to shopping cart as a WORD document.
- Correct quantities entered in shopping cart
- Units of measure correct – i.e. LFT, ACR, FT, YD3, YD2, MI, TON, etc. (**DO NOT USE LF** for Linear Feet)
- Correct Funding source(s) entered in cart

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Signature

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Date

## 2. REGISTER OF PROPOSAL EXAMPLE