STATE OF SOUTH CAROLINA

State Budget and Control Board

PROCUREMENT SERVICES DIVISION

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September 26, 2005

Dr. James F. Barker, FAIA
President
201 Sikes Hall
Clemson University
Clemson, South Carolina 29634

Dear Dr. Barker:

Over the past several months, Keith McCook, Assistant General Counsel for the Budget and Control Board, and I have worked with Angie Leidinger and Kathy Coleman of your staff to develop an alternative procurement code for economic development and research for the university. Moreover, primarily as a result of their efforts, we have completed a cooperative effort with the University of South Carolina and the Medical University of South Carolina to develop the South Carolina Research University Procurement Code for Research Infrastructure, a standard alternative procurement code for all three research institutions. In accordance with SC Code section 11-51-190, I recommend approval of the attached South Carolina Research University Procurement Code for Research Infrastructure and accompanying regulations for use by Clemson University, the University of South Carolina, and the Medical University of South Carolina.

Sincerely,

Voight Shealy

Voight Shealy
Chief Procurement Officer

Attachment

C: Andrew A. Sorensen, Ph.D., President, University of South Carolina
Raymond S. Greenberg, MD, Ph.D., President, Medical University of South Carolina
Ms. Lynn W. Metcalf, Commission of Higher Education
Angie Leidinger, Executive Director of Governmental Affairs, Clemson University
Richard W. Kelly, Vice President and Chief Financial Officer, University of South Carolina
Lisa Montgomery, Vice President of Finance and Administration, Medical University of SC
Delbert H. Singleton, Jr., Secretary, Budget and Control Board
Keith McCook, Assistant General Counsel, Budget and Control Board
Michael M. Thomas, State Engineer, Budget and Control Board

Disclaimer
This statutory database is current through the 2004 Regular Session of the South Carolina General Assembly. Changes to the statutes enacted by the 2005 General Assembly, which will convene in January 2005, will be incorporated as soon as possible. Some changes enacted by the 2005 General Assembly may take immediate effect. The State of South Carolina and the South Carolina Legislative Council make no warranty as to the accuracy of the data, and users rely on the data entirely at their own risk.
THE SOUTH CAROLINA RESEARCH UNIVERSITY PROCUREMENT CODE FOR RESEARCH INFRASTRUCTURE
ARTICLE 1.
GENERAL PROVISIONS
SECTION 10. Citation.
This code shall be known and may be cited as the "South Carolina Research University Procurement Code for Research Infrastructure". This code is adopted pursuant to Section 11-51-190 of the South Carolina Code of Laws. Every solicitation, and every advertisement or notice of a solicitation, issued or published pursuant to this code shall state as follows: PURSUANT TO SECTION 11-51-190, THIS PROCUREMENT IS CONDUCTED IN ACCORDANCE WITH THE SOUTH CAROLINA RESEARCH UNIVERSITY PROCUREMENT CODE FOR RESEARCH INFRASTRUCTURE.
SECTION 20. Purpose and policies.
The underlying purposes and policies of this code are:
(a) to provide increased economy for procurement activities of research universities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the research universities and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act to the extent that such Act applies;
(b) to foster effective broad-based competition within the free enterprise system;
(c) to develop procurement capability responsive to the research universities' needs;
(d) to permit the continued development of explicit and thoroughly considered procurement policies and practices;
(f) to ensure the fair and equitable treatment of all persons who deal with the research universities;
(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 research universities' procurement process; and
(h) to develop an efficient and effective means of delegating roles and responsibilities to the research universities' procurement officers.
SECTION 30. Obligation of good faith.
Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

SECTION 40. Application of this Code.

(1) General Application. This code applies only to contracts solicited or entered into after the effective date of this code.

(2 This code and the accompanying regulations are authorized by Section 11-51-190 and may be used by the research universities only for procurements specifically related only to a Research Infrastructure Project (as defined in Section 11-51-30) that has been approved by the Budget and Control Board as a Research Infrastructure Project for purposes of this code. A project may be approved only if a research university has defined the project with sufficient specificity to effectively limit the acquisitions to which the approved procurement procedures would apply and bonding capacity is still available for the research university pursuant to the South Carolina Research University Infrastructure Act. Approval of a project for purposes of using this code, and the accompanying regulations, may be granted prior to seeking approval of the project pursuant to Sections 11-51-70, 11-51-100, or 11-51-110.

(3) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance or contract funds, the research universities shall also comply with such federal law and authorized regulations as are mandatorily applicable and which are not presently reflected in the code. Requirements of this Code that are more restrictive than federal requirements shall be followed.

SECTION 45. Payment for supplies and services.

Payment for supplies and services shall be as stated in the terms and conditions of the contract for the supplies and services.

SUBARTICLE 3.

DETERMINATIONS

SECTION 210. Determinations.

Written determinations and findings required by the code shall be retained in an official contract file of the research university administering the contract. Such determinations shall be documented in sufficient detail to satisfy the requirements of audit as provided for in Section 1230.

SUBARTICLE 5.

DEFINITIONS OF TERMS USED IN THIS CODE

SECTION 310. Definitions.

Unless the context clearly indicates otherwise:

(2) "Board" means State Budget and Control Board.

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

(4) "Change order" means any written alteration in specifications, delivery point, rate of delivery, period

of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.
(5) "Chief Procurement Officer" means the person, above the level of procurement officer, designated in writing as such by the President of the respective research university.
(7) "Construction" means the process of building, altering, repairing, remodeling, improving, or demolishing any research university structure or building or other improvements of any kind to any real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings, or real property.
(8) "Contract" means all types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.
(9) "Contract modification" means a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.
(10) "Contractor" means any person having a contract with a research university.
(11) "Cost effectiveness" means the ability of a particular product or service to efficiently provide goods or services to the State. In determining the cost effectiveness of a particular product or service, the appropriate chief procurement officer shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.
(12) "Data" means recorded information, regardless of form or characteristics.
(13) "Days" means calendar days. In computing any period of time prescribed by this code or the regulations, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day.
(15) "Designee" means a duly authorized representative of a person with formal responsibilities under the code.
(16) "Employee" means an individual drawing a salary from a research university and any non-salaried individual performing personal services at the request of a research university.
(19) "Grant" means 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.
(20) "Invitation for Bids" means a written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of stated supplies, services or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.
(21) "Materials Management Officer" or "MMO" means the person holding the position as the head of the materials management office of the State.
(22) "Office" means a non-mobile place for the regular transaction of business or performance of a particular service and staffed by at least one employee on a routine basis.
(24) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
(25) "Procurement officer" means any person duly authorized by the respective research university in

accordance with procedures prescribed by procurement regulation, to enter into and administer contracts and make written determinations and findings with respect thereto.

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

(28) "Request for Proposals (RFP)" means a written or published solicitation issued by an authorized procurement officer for proposals to provide supplies or services, which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the research university. The award of the contract must be made on the basis of evaluation factors which must be stated in the RFP.

(29) "Services" means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements.

(30) "Subcontractor" means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with a research university.

(31) "Supplies" means all personal property including, but not limited to, equipment, materials, printing, and insurance.

(32) "State" means state government.

(34) "Research University" or "Research Universities" means Clemson University, The Medical University of South Carolina or The University of South Carolina- Columbia.

(35) "Construction Manager At Risk (CM-At-Risk) Contract" means a contract under which a construction manager provides pre-construction services for a fixed fee or fee schedule. Such a contract provides that, prior to commencing construction, the construction manager may be awarded a Guaranteed Maximum Price Contract.

(36) "Guaranteed Maximum Price (GMP) Contract" means a cost-reimbursement contract where in the contractor shall be paid a fee based on a fixed rate or amount or on a fixed formula, but where the total contract amount, including the contractor's fee and general conditions, will not exceed a guaranteed maximum amount. The GMP Contract shall include all costs for the construction and completion of the project, including all mobilization, general conditions, profit and overhead costs of any nature.

SUBARTICLE 7.

PUBLIC ACCESS TO PROCUREMENT INFORMATION

SECTION 410. Public access to procurement information.

Procurement information shall be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act) with the exception that commercial or financial information obtained in response to a "Request for Proposals" or any type of bid solicitation which is privileged and confidential need not be disclosed.

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

(1) customer lists;

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

(3) design concepts, including methods and procedures;

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

Evaluative documents pre-decisional in nature such as inter- or intra-agency memoranda containing

technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the pre-decisional deliberations. For all documents submitted in response or with regard to any solicitation or other request, the person submitting the documents must comply with any instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public. Nothing in this subparagraph exempts documents from disclosure in accordance with Title 30 Chapter 4.
SECTION 540. Authority and duties of the Research Universities.
(1) Procurement Regulations. In conjunction with this Code, the research universities have adopted procurement regulations governing the procurement, management, and control of any acquisitions conducted pursuant to this Code. Such regulations shall be binding in all procurements made by the research universities .
(3) Operational Procedures. Research universities are authorized to develop internal operational procedures consistent with this code and procurement regulations.
(4) The board shall have the power to audit and monitor the implementation of the procurement regulations and the requirements of this code.
SECTION 710. Exemptions.
The Board may exempt specific procurements from the procedures required by this Code and regulations.
SECTION 840. Delegation of authority.
Subject to the procurement regulations, the Chief Procurement Officer may delegate authority to designees. Such delegation must also comply with any applicable policies or procedures of the research university.
SECTION 1210. Certification; Expiration of Code and Regulations.
This Code and regulations were approved and certified by the State Budget and Control Board on (date). The Code and regulations shall be resubmitted to the Board for recertification during the first quarter of the fifth year following initial approval. The Code and regulations expire at the end of the second quarter of the fifth year following initial approval unless re-approved by the Board.
SECTION 1230. Auditing and fiscal reporting.
(1) The Materials Management Office through consultation with the State Chief Procurement Officers shall develop written plans for the auditing of the research universities' procurements under this code.
In procurement audits of the research universities thereafter, the auditors from the Materials Management Office shall review the adequacy of the system's internal controls in order to ensure compliance with the requirement of this code and the regulations. Any noncompliance discovered through audit must be transmitted in management letters to the research university Chief Procurement Officer, the President of the research university and the Budget and Control Board. The auditors shall provide in writing proposed corrective action . Based upon audit recommendations of the Materials Management Office, the board

may revoke the authority of the research university to conduct procurements under this code and the procurement regulations. Costs associated with the internal review and audit are the responsibility of the research university and will be paid to the entity performing the audit.

ARTICLE 5.

SOURCE SELECTION AND CONTRACT FORMATION

SUBARTICLE 1.

DEFINITIONS

SECTION 1410. Definitions of terms used in this article.

Unless the context clearly indicates otherwise:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the cost principles as provided in Article 13 of this chapter and a fee, if any.

(2) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

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

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

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

(3) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section 1520.

(4) "Purchase description" means specifications or any other document describing the supplies, services, or construction to be procured.

(5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

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

(7) "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

SUBARTICLE 3.

METHODS OF SOURCE SELECTION

SECTION 1510. Methods of source selection.

All research university contracts shall be awarded by competitive sealed bidding, pursuant to Section 1520, or by competitive sealed proposals, pursuant to Section 1530 or 3035, as appropriate, except as provided in:

(1) Section 1525 (Fixed Priced Bidding);

(2) Section 1528 (Competitive Best Value Bidding);

(3)[deleted]

(4)[deleted]
(5) [deleted]
(6)[deleted]
(7) Section 1540 (Negotiations After Unsuccessful Competitive Sealed Bidding);
(8) Section 1550 (Small Purchases);
(9) Section 1560 (Sole Source Procurements);
(10) Section 1570 (Emergency Procurements);
(11) Section 1575 (Procurements at Auction);
(12) [deleted]
(13) Section 3020 (Construction Procurement Procedures);
(14) Section 3220 (Architect-Engineer, Construction Management and Land Surveying Services Procurement Procedures);
(15) Section 3230 (Exception for Small Architect-Engineer and Land Surveying Services Contracts).
(16) Section 1529 (Competitive On-line Bidding).
SECTION 1520. Competitive sealed bidding.
(1) Condition for Use. Contracts amounting to one hundred thousand dollars or more shall be awarded by competitive sealed bidding except as otherwise provided in Section 1510.
(2) Invitation for Bids. An invitation for bids shall be issued in an efficient and economical manner and shall include specifications and all contractual terms and conditions applicable to the procurement.
(3) Notice. Adequate notice of the invitation for bids shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice shall include publications in a newspaper of general circulation in the State such as "South Carolina Business Opportunities".
(4) Receipt and Safeguarding of Bids. All bids (including modifications) received prior to the time of opening shall be kept secure and unopened, except as provided for by the procurement regulations.
(5) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids and in the manner prescribed by the procurement regulations. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be tabulated. The tabulation shall be open to the public inspection at that time.
(6) Bid Acceptance and Bid Evaluation. Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. Bids shall be evaluated based on the requirements set forth in the invitation for bids and in accordance with the procurement regulations.
(7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and reward of awards or contracts, after award but prior to performance may be permitted in accordance with the procurement regulations. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the research university 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 a written determination of appropriateness made by the Chief Procurement Officer.
(8) Discussion with Bidders. As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the procuring agency's sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any bidder's bid must be documented in writing by the procurement officer and shall be included with the bid. Documentation concerning the clarification shall be subject to disclosure upon request as required by Section 410.

(9) Tie Bids. If two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined as follows:
(a) If there is a firm headquartered in South Carolina tied with an out-of-state firm, the award must be made automatically to the firm headquartered in South Carolina.
(b) Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of the State must be resolved in favor of the South Carolina commodity.
(d) Tie bids involving firms headquartered in South Carolina must be resolved by the flip of a coin in the office of the Chief Procurement Officer or his designee upon one days notice to the tied bidders, witnessed by the responsible procurement officer, and with an opportunity for such tied bidders to attend.
(e) In all other situations where bids are tied, the award will be made by the Chief Procurement Officer or his designee to the tied bidder offering the quickest delivery time, or if the tied bidders have offered the same delivery time, the tie shall be resolved by the flip of a coin as provided for in (d) above.
(10) Award. Unless there is a compelling reason to reject bids as prescribed by this Code or the procurement regulations, notice of an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location specified in the invitation for bids. Prior to the posting of the award, the research university may negotiate with the lowest responsive and responsible bidder to lower his bid within the scope of the invitation for bids. The invitation for bids and the posted notice must contain a statement of a bidder's right to protest under Section 4210(1) and the date and location of posting must be announced at bid opening. When a contract has a total or potential value in excess of one-hundred thousand dollars, in addition to the posted notice, notice of an intended award must be given to all bidders responding to the solicitation, except when only one response is received. Such notice must contain a statement of the bidder's right to protest under Section 4210(1).
When a contract has a total or potential value in excess of one-hundred thousand dollars, sixteen days after notice is given the research university may enter a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. When only one response is received, the notice of intended award and the sixteen-day delay of award may be waived. A determination of responsibility must be made before award in accordance with Section 1810.
(11) Request for Qualifications and Prequalifications. Prior to soliciting bids, the procurement officer, may issue a request for qualifications from prospective bidders. Such request shall contain at a minimum a description of the general scope of the 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. In the procurement officer's discretion, the request may require any additional information, including but not limited to: resumes of proposed team members, examples of effective teamwork on projects of similar size and complexity, ability to perform on schedule, capacity to undertake new projects, backlog of work, safety record, location (state), claims made and the disposition thereof, use of disadvantaged business enterprises, experience on projects in South Carolina, and other criteria which will be relevant to the offeror's ability to perform the proposed work in accordance with the research universities' policies, needs, financial ability and schedule requirements. Adequate public notice of the request for qualifications shall be given in the manner provided in Section 1520(3).
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 bids. The failure of a prospective bidder to be selected to receive the invitation for bids shall not be grounds for protest under Section 4210.
(12) Minor Informalities and Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for

bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the research university. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:
(a) failure of a bidder to return the number of copies of signed bids required by the solicitation;
(b) failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size;
(c) failure of a bidder to sign its bid, but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization, and the bid carries such a signature or the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;
(d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if:
(i) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid, thereon, provided that the bidder states under oath that it received the amendment prior to bidding and that the bidder will stand by its bid price or,
(ii) the amendment has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the governmental body;
(e) failure of a bidder to furnish an affidavit concerning affiliates;
(f) failure of a bidder to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs;
(g) failure of a bidder to furnish cut sheets or product literature;
(h) failure of a bidder to furnish certificates of insurance;
(i) failure of a bidder to furnish financial statements;
(j) failure of a bidder to furnish references;
(k) failure of a bidder to furnish its bidder number; and
(l) notwithstanding Title 40 of the South Carolina Code of Laws, the failure of a bidder to indicate his contractor's license number or other evidence of licensure, provided that no contract shall be awarded to the bidder unless and until the bidder is properly licensed under the laws of South Carolina.
SECTION 1525. Competitive fixed price bidding.
(1) Conditions for Use. When a procurement officer determines in writing that the use of competitive sealed bidding or competitive sealed proposals is either not practicable or not advantageous to the research university, a contract may be entered into by competitive fixed price bidding subject to the provisions of Section 1520 and the procurement regulations, unless otherwise provided for in this section.
(2) Fixed Price Bidding. The purpose of fixed price bidding is to provide multiple sources of supply for specific supplies or services based on a preset maximum price which the research university will pay for such goods or services.
(3) Public Notice. Adequate public notice of the solicitation shall be given in the same manner as provided in Section 1520(3).
(4) Pricing. The procurement officer shall establish, prior to issuance of the fixed price bid, a maximum amount the research university will pay for the supplies or services desired.
(5) Evaluation. Vendors' responses to the fixed price bid will be reviewed to determine if they are

responsive and responsible.
(6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the requirements of the fixed price bid. All bidders whose bids, in the procurement officer's sole judgment, need clarification shall be accorded such an opportunity.
(7) Award. Award must be made to all responsive and responsible bidders to the request for competitive fixed price bidding. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.
(8) Bids Received After Award. Bidders not responding to the initial fixed price bid may be added to the awarded vendors' list provided the bidder furnishes evidence of responsibility and responsiveness to the state's original fixed price bid as authorized by the solicitation.
(9) Remedies. The failure of a specific offeror to receive business, once it has been added to the awarded vendors' list, shall not be grounds for a contract controversy under Section 4230.
SECTION 11-35-1528. Competitive best value bidding.
(1) Conditions for Use. When a procurement officer determines in writing that the use of competitive sealed bidding or competitive sealed bid proposals is either not practicable or not advantageous to a research university, a contract may be entered into by competitive best value bidding subject to the provisions of Section 1520 and the procurement regulations, unless otherwise provided for in this section.
(2) Best Value Bidding. The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific supplies or services based on pre-determined criteria identified by the research university.
(3) Public Notice. Adequate public notice of the request for the solicitation shall be given in the same manner as provided in Section 1520(3).
(4) Bid Opening. At bid opening, the only information that will be released is the names of the participating bidders. Cost information will be provided after the ranking of bidders and the issuance of award.
(5) Evaluation Factors. The best value bid shall state the factors to be used in determination of award and the numerical weighting for each factor. Cost must be a factor in determination of award and cannot be weighted at less than sixty percent. Best value bid evaluation factors may include, but are not limited to, any of the following as determined by the Chief Procurement Officer in his sole discretion and not subject to protest:
(a) operational costs that the research university would incur if the bid is accepted;
(b) quality of the product or service, or its technical competency;
(c) reliability of delivery and implementation schedules;
(d) maximum facilitation of data exchange and systems integration;
(e) warranties, guarantees, and return policy;
(f) vendor financial stability;
(g) consistency of the proposed solution with the research university's planning documents and announced strategic program direction;
(h) quality and effectiveness of business solution and approach;
(i) industry and program experience;
(j) prior record of vendor performance;
(k) vendor expertise with engagement of similar scope and complexity;
(l) extent and quality of the proposed participation and acceptance by all user groups;
(m) proven development methodologies and tools; and
(n) innovative use of current technologies and quality results.
(6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the best value bid. All bidders whose bids, in the procurement officer's sole judgment, need clarification shall be accorded such an opportunity.

(7) Selection and Ranking. Bids shall be evaluated by using only the criteria stated in the best value bid and by adhering to the weighting as assigned. All evaluation factors, other than cost, will be considered prior to determining the effect of cost on the score for each participating bidder. Once the evaluation is complete, all responsive bidders shall be ranked from most advantageous to least advantageous to the research university, considering only the evaluation factors stated in the best value bid.

(8) Award. Award must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the research university, taking into consideration all evaluation factors set forth in the best value bid. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.

SECTION 1529. Competitive on-line bidding.

(1) Conditions for Use. When a procurement officer determines that on-line bidding is more advantageous than other procurement methods provided by this code, a contract may be entered into by competitive on-line bidding, subject to the provisions of Section 1520 and the procurement regulations, unless otherwise provided in this section.

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

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

(4) Provisions Not to Apply. Paragraph (5) (Bid Opening) of Section 1520 does not apply to solicitations issued pursuant to this section.

SECTION 1530. Competitive sealed proposals.

(1) Conditions for Use. When a procurement officer determines in writing that the use of competitive sealed proposals is in the best interest of the research university, a contract may be entered into by competitive sealed proposals subject to the provisions of Section 1520 and the procurement regulations, unless otherwise provided for in this section.

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

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

(4) Request for Qualifications and Prequalifications. Prior to soliciting proposals, the research university,

acting through the authorized procurement officer, may issue a request for qualifications from prospective offerors. Such request shall contain at a minimum a description of the goods or services to be solicited by the request for proposals and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information on their qualifications, experience, and ability to perform the requirements of the contract. In the procurement officer's discretion, the request may require any additional information, including but not limited to: resumes of proposed team members, examples of effective teamwork on projects of similar size and complexity, ability to perform on schedule, capacity to undertake new projects, backlog of work, safety record, location (state), claims made and the disposition thereof, use of disadvantaged business enterprises, experience on projects in South Carolina, and other criteria which will be relevant to the offeror's ability to perform the proposed work in accordance with the research universities' policies, needs, financial ability and schedule requirements. Adequate public notice of the request for qualifications shall be given in the manner provided in Section 1520(3).
After receipt of the responses to the request for qualifications from prospective offerors, the perspective 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 proposals. The failure of a prospective offeror to be selected to receive the request for proposals shall not be grounds for protest under Section 4210.
(5) Evaluation Factors. The request for proposals shall state the relative importance of the factors to be considered in evaluating proposals but shall not require a numerical weighting for each factor. Price may but need not be an evaluation factor.
(6) Discussion with Offerors. As provided in the Request for Proposals, and under regulations, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. All offerors, whose proposals, in the procurement officer's sole judgment, need clarification, may be accorded such an opportunity.
(7) Selection and Ranking. Proposals shall be evaluated using only the criteria stated in the request for proposals and there must be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to the research university, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award shall be made in accordance with Section 1530(9) below.
(8) Negotiations. Whether price was an evaluation factor or not, the procurement officer, through the Chief Procurement Officer, may, in his sole discretion and not subject to challenge through a protest filed under Section 4210, proceed in any of the manners indicated below:
(a) negotiate price with the highest ranked offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted, in the sole discretion of the procurement officer, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the procurement officer in his sole discretion; or
(b) negotiate with the highest ranking offeror on matters affecting the scope of the contract, so long as the overall nature and intent of the contract is not changed. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the procurement officer, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the procurement officer in his sole discretion; or
(c) during the negotiation process as outlined in subsections (a) and (b) above, if the procurement officer is unsuccessful in its first round of negotiations, he may reopen negotiations with any offeror with whom it previously negotiated; or
(d) if, after following the procedures set forth in Section 1530(8), a contract is not able to be negotiated, the scope of the request for proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive offerors must be allowed to submit their best and final offers.

In conducting negotiations, there must be no disclosure of any confidential information derived from proposals and negotiations submitted by competing offerors.
(9) Award. Award must be made to the responsive offeror whose proposal is determined in writing to be the most advantageous to the research university, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the procuring agency determines to utilize one of the options provided in Section 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 1520(10).
SECTION 1540. Negotiations after unsuccessful competitive sealed bidding.
When bids received pursuant to an invitation for bids under Section 1520 are considered unreasonable by the research university, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the Chief Procurement Officer or his designee, that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:
(1) each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
(2) the negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation;
(3) the negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.
SECTION 1550. Bid procedures on procurements not exceeding one-hundred thousand dollars.
Authority. (1) The following small purchase procedures may be utilized in conducting procurements for research universities that are less than one-hundred thousand dollars in actual or potential value. Procurement requirements must not be artificially divided so as to constitute a small purchase under this section.
(2) Competition and Price Reasonableness. (a) Purchases Not in Excess of Six Thousand Dollars. Small purchases not exceeding six thousand dollars may be accomplished without securing competitive quotations if the prices are considered to be reasonable. The purchasing office shall annotate the purchase requisition: "Price is fair and reasonable" and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase "not in excess of" may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement officer suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.
(b) Purchases from Six Thousand and one dollars to Twenty Thousand dollars. Solicitations of verbal or written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source.
(c) Purchases from Twenty Thousand and one to Forty Thousand. Solicitation of written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition. The award must be made to the lowest responsive and responsible sources.
(d) Purchases from Forty Thousand and one dollars to One-Hundred Thousand dollars. Written solicitation of written quotes, bids, or proposals shall be made. The procurement must be advertised at least once in the South Carolina Business Opportunities publication. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking

offeror.

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

(4) All competitive procurements above forty thousand dollars must be advertised at least once in the South Carolina Business Opportunities publication.

SECTION1560. Sole source procurement.

A contract may be awarded for a supply, service, or construction item without competition when the President of a research university, under the procurement regulations, determines in writing that there is only one source for the required supply, service, or construction item.

These regulations must include the requirements contained in this paragraph. Written documentation must include the determination and basis for the proposed sole source procurement. In cases of reasonable doubt, competition must be solicited. Any decision by a research university that a procurement be restricted to one potential vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

SECTION 1570. Emergency procurements.

Notwithstanding any other provision of this code, the President of a research university may make or authorize others to make emergency procurements only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in the procurement regulations; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

SECTION 1575. Participation in auctions.

Research universities may elect to participate in auctions. A procurement officer shall (a) survey the needed items being offered at 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) estimated repair cost and delivery cost, if any, of the desired items. Using this information, the procurement officer shall determine the maximum price that it can pay for each item desired. At the auction, the procurement officer shall not exceed the maximum price so determined.

SUBARTICLE 5.

CANCELLATION OF SOLICITATIONS

SECTION 1710. Cancellation of invitation for bids or request for proposals.

Subject to the procurement regulations, any solicitation under this code may be cancelled, or any or all bids or proposals may be rejected in whole or part as may be specified in the solicitation, when it is in the best interest of the research university. The reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file. The research university shall not be obligated to reimburse offerors for any cost associated with cancellation.

SUBARTICLE 7.
RESPONSIBILITY OF BIDDERS AND OFFERORS
SECTION 1810. Responsibility of bidders and offerors.
(1) Determination of Responsibility. Responsibility of the bidder or offeror shall be ascertained for each contract let by the research university based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.
(2) Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with the procurement regulations. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.
(3) Right of Nondisclosure. Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the offices of the research university, Budget and Control Board, or the Office of the Attorney General without prior written consent by the bidder or offeror.
SECTION 1830. Cost or pricing data.
(1) Contractor Certification. A contractor shall, except as provided in subsection (3) of this section, submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of mutually determined specified date prior to the date of:
(a) the pricing of any contract awarded by competitive sealed proposals pursuant to Section 1530, a CM-at-Risk or GMP contract pursuant to 3035, or a contract awarded pursuant to the sole source procurement authority as provided in Section 1560; or
(b) the pricing of any change order or contract modification which exceeds thirty-five thousand dollars.
(2) Price Adjustment. Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to the research university, including profit or fee, shall be adjusted to exclude any significant sums by which the research university finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between parties.
(3) Cost or Pricing Data Not Required. The requirements of this section shall not apply to contracts:
(a) where the contract price is based on adequate price competition;
(b) where the contract price is based on established catalog prices or market prices;
(c) where contract prices are set by law or regulations; or
(d) where it is determined in writing in accordance with the procurement regulations that the requirements of this section may be waived and the reasons for such waiver are stated in writing.
SUBARTICLE 9.
TYPES AND FORMS OF CONTRACTS
SECTION 2010. Types of contracts.
Subject to the limitations of this section, any type of contract which will promote the best interests of the

research university may be used, except that the use of a cost-plus-a-percentage-of-cost contract (other than a GMP contract) shall be approved by the Chief Procurement Officer or his designee. A cost-reimbursement contract, including a cost-plus-a-percentage-of-cost contract, shall be used only when a determination sufficient for external audit is prepared showing that such contract is likely to be less costly to the research university than any other type or that it is impracticable to obtain the supplies, services or construction required except under such a contract.

SECTION 2020. Approval of accounting system.

The Chief Procurement Officer or his designee may require that:

(1) the proposed contractor's accounting system shall permit timely development of all necessary cost data in the form required by the specific contract type contemplated;

(2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

SECTION 2030. Multi-term contracts.

(1) Specified Period. Unless otherwise provided by law, a contract for supplies or services shall not be entered into for any period of more than one year unless approved by the Chief Procurement Officer provided, that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(2) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing by the research university:

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

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

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

(4) The maximum time for any multi-term contract is five years. Contract terms of up to seven years may be approved by the Chief Procurement Officer. Contracts exceeding seven years must be approved by the research university Board of Trustees.

SUBARTICLE 11.

INSPECTION OF PLANT AND AUDIT OF RECORDS

SECTION 2210. Right to inspect plant.

The Chief Procurement Officer or his designee shall be authorized, at reasonable times, to inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the research university.

SECTION 2220. Right to audit records.

(1) Audit of Cost or Pricing Data. All research university contracts shall contain a clause setting forth the

research university's right at reasonable times and places to audit the books and records of any contractor or subcontractor who has submitted cost or pricing data pursuant to Section 1830 to the extent that such books and records relate to such cost or pricing data. The contract shall further set forth that the contractor or subcontractor who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the chief procurement officer; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the Chief Procurement Officer.

(2) Contract Audit. The research university shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer .

SUBARTICLE 13.

DETERMINATIONS AND REPORTS

SECTION 2410. Finality of determinations.

The determinations required by Section 1520(7) (Competitive Sealed Bidding: Correction or Withdrawal of Bids; Cancellation of Awards), Section 1525(1) (Competitive Fixed Price Bidding: Conditions for Use), Section 1528(1) (Competitive Best Value Bidding: Conditions for Use), Section 1528(8) (Competitive Best Value Bidding: Award), Section 1529(1) (Competitive on-line bidding; Conditions for Use), Section 1530(9) (Competitive Sealed Proposals Award), Section 1540 (Negotiations After Unsuccessful Competitive Sealed Bidding), Section 1560 (Sole Source Procurement), Section 1570 (Emergency Procurement), Section 1810(2) (Responsibility of Bidders and Offerors, Determination of Nonresponsibility), Section 1830(3) (Cost or Pricing Data, Cost or Pricing Data Not Required), Section 2010 (Types and Forms of Contracts), Section 2020 (Approval of Accounting System), Section 2030(2) (Multi-Term Contracts, Determination Prior to Use), Section 3035(1) (Construction Manager At Risk; Conditions for Use), and Section 3220(5) (Procurement Procedure, Selection and Ranking of the Five Most Qualified) shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. The Chief Procurement Officer shall review samples of such determinations periodically, and issue reports and recommendations on the appropriateness of the determinations made.

SECTION 2420. Reporting of anticompetitive practices.

When any information or allegations concerning anticompetitive practices among any bidders or offerors, come to the attention of any employee of the research university , immediate notice of the relevant facts shall be transmitted to the Attorney General.

SECTION 2430. Retention of procurement records.

All procurement records of research universities shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of Archives and History after consultation with the Attorney General. All retained documents shall be made available to the Attorney

General or a designee upon request and proper receipt therefor.

SECTION 2440. Records of procurement actions.

(1) Contents of Records. Any research university procurement officer shall submit quarterly a record listing all contracts made under Section 1560 (Sole Source Procurement) or Section 1570 (Emergency Procurements) to the Chief Procurement Officer. The record shall contain:

(a) each contractor's name;

(b) the amount and type of each contract;

(c) a listing of supplies, services, or construction procured under each contract.

The chief procurement officers shall maintain these records for five years.

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

ARTICLE 7.

SPECIFICATIONS

SUBARTICLE 1.

DEFINITIONS

SECTION 2610. Definitions of terms used in this article.

As used in this article, the term "specifications" means any technical or purchase description or other description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may also include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

SUBARTICLE 3.

SPECIFICATIONS

SECTION 2730. Assuring competition.

All specifications shall be drafted so as to assure cost effective procurement of the research university's actual needs and shall not be unduly restrictive.

SECTION 2750. Specifications prepared by architects and engineers.

The requirements of this article regarding the nonrestrictiveness of specifications apply to each solicitation and include, among other things, all specifications prepared by architects, engineers, designers, draftsmen, and land surveyors for research university contracts.

ARTICLE 9.

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

SUBARTICLE 1.

DEFINITIONS

SECTION 2910. Definitions of terms used in this article.

(1) "Architect-engineer and land surveying services" are those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture, and interior design pertaining to construction, as defined by the laws of this State, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.

(2) "Construction" means the process of building, altering, repairing, remodeling, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(3) "Construction management services" are those professional services associated with a system in which the using agency directly contracts with a professional construction manager to provide that group of management activities required to plan, schedule, coordinate, and manage the design and construction plan of a state project in a manner that contributes to the control of time, cost, and quality of construction as specified in the construction management contract.

(4) "Construction Manager" means a contractor providing construction management services.

SUBARTICLE 3.

CONSTRUCTION SERVICES

SECTION 3010. Construction Contracting Administration.

(1) Selection of Method. The method of construction contracting administration used for a research university construction project shall be determined to be that method which is most advantageous to the research university and will result in the most timely, economical, and successful completion of the construction project. The research university shall select the appropriate method of construction contracting administration for a particular project and shall state in writing the facts and considerations which led to the selection of that particular method.

SECTION 3020. Construction procurement procedures.

(1) Source Selection. All research university construction contracts shall be awarded by competitive sealed bidding pursuant to the procedures set forth in Section 1520 subject to the exceptions enumerated in subsection (2) of this section and except as provided in Sections 1530, 1550, 1560, 1570, and 3035.

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

(a) A research university's solicitation shall set forth all requirements of the solicitation including, but not limited to:

(i) The research university, in consultation with the architect-engineer assigned to the project, shall identify by specialty in the invitation for bids all subcontractors, as defined by applicable documents of

the American Institute of Architects, who are expected to perform work for the prime contractor to or about the construction when those subcontractors' contracts are each expected to exceed three percent of the prime contractor's total base bid. In addition, the research university, in consultation with the architect-engineer and CM-At-Risk if relevant assigned to the project, may identify by specialty in the invitation for bids any subcontractors who are expected to perform work which is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable under any provision of law. Any bidder in response to an invitation for bids shall set forth in his bid the name of only those subcontractors that will perform the work as identified in the invitation for bids. If the bidder determines to use his own employees to perform any portion of the work for which he would otherwise be required to list a subcontractor and if the bidder is qualified to perform such work under the terms of the invitation for bids, the bidder shall list himself in the appropriate place in his bid and not subcontract any of that work except with the approval of the using agency for good cause shown.
(ii) Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive.
(iii) No prime contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except for one or more of the following reasons:
(a) upon a showing satisfactory to the research university by the contractor that a subcontractor who was listed is not financially responsible;
(b) upon a showing satisfactory to the research university by the contractor that the scope of work bid by a listed subcontractor did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the listed subcontractor's original bid;
(c) upon a showing satisfactory to the research university made by the contractor within four working days of the bid opening that the subcontractor was listed as a result of an inadvertent clerical error;
(d) upon a showing satisfactory to the research university by the contractor that the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prime contractor after the subcontractor had represented to the prime contractor that he could obtain a performance and payment bond;
(e) upon a showing satisfactory to the research university by the contractor that the listed subcontractor is required to be licensed and does not have the license by the time it is required by law;
(f) when the listed subcontractor fails or refuses to perform his subcontract;
(g) when the work of the listed subcontractor is found by the research university to be substantially unsatisfactory;
(h) upon mutual agreement of the contractor and subcontractor;
(i) with the consent of the research university for good cause shown.
The request for substitution must be made to the research university in writing. This written request does not give rise to any private right of action against the prime contractor in the absence of actual malice.
(iv) Where substitution is allowed, the prime contractor, before obtaining prices from any other subcontractor, must attempt in good faith to negotiate a subcontract with at least one subcontractor whose bid was received prior to the submission of the prime contractor's bid. Nothing in this section affects a contractor's ability to request withdrawal of a bid in accordance with the provisions of this code and the regulations promulgated under it.
(v) The research university shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening.
(c) In lieu of Section 1520(10) the following provisions apply. Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location which has been specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of the bidder's right to protest under Section 4210(1) and the date and location of posting must be announced at bid opening. In addition to posting notice as provided above, the research university shall promptly send all responsive bidders a copy of the notice of intended award and of the bid tabulation. Such mailed notice must indicate the

posting date and must contain a statement of the bidder's right to protest under Section 4210(1).
Sixteen days after notice is given the agency may enter into a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. A determination of responsibility must be made before award in accordance with Section 1810.
If, at bid opening, only one bid is received and determined to be responsive and responsible and within the agency's construction budget, award may be made without the sixteen-day waiting period.
(d) Negotiations After Unsuccessful Competitive Sealed Bidding. In lieu of Section 1540, the following provisions apply:
(1) When bids received pursuant to an invitation for bids exceed available funds and it is determined in writing by the agency that circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder, provided that this base bid, less any deductive alternates, does not exceed available funds by an amount greater than five percent of the construction budget established for that portion of the work. The research university may change the scope of the work to reduce the cost to be within the established construction budget but shall not reduce the cost below the established construction budget more than ten percent without a written determination by the Chief Procurement Officer based on the best interest of the research university.
SECTION 3025. Approval of architectural, engineering or construction changes.
A research university shall be allowed to approve and pay for amendments to architectural/engineering contracts and change orders to construction contracts, which do not alter the original scope or intent of the project, and which do not exceed the previously approved project budget.
SECTION 3030. Bond and security.
In all cases involving bonding and security the requirement shall be left to the discretion of the Chief Procurement Officer. Nothing in the Code is intended to change the requirements for the Subcontractors' and Suppliers' Payment Protection Act, Title 29, Chapter 6.
SECTION 3035. CONSTRUCTION MANAGER AT RISK
(1) Conditions for Use. Based upon a determination in writing of the procurement officer, a Construction Manager At Risk (CM-At-Risk) Contract may be entered into under the provisions of Section 1530 and the procurement regulations, unless otherwise provided in this section.
(2) Independent Design Services. Prior to issuing an RFP for a Construction Manager At Risk Contract, a research university may procure architect-engineer services, including completed programming, conceptual design, and preliminary budget, pursuant to 3020. The architect-engineer shall participate in the development of an RFP, the evaluation and ranking of the proposals, and all negotiations.
(3) Bidding Process; Evaluation Factors. At a minimum, the RFP shall include completed programming, the conceptual design, and a preliminary budget. The RFP shall request information concerning the prospective offeror's qualifications, experience, and ability to perform the requirements of the contract, including but not limited to, experience on projects of similar size and complexity, and history of on-time, on-budget, on-schedule construction. The offeror's proposed fee may be a factor in determining the award. Award shall be made in accordance with 1530.

(4) Guaranteed Maximum Price Contract. After all preconstruction services and final construction drawings have been completed, or prior thereto upon the written determination of the Chief Procurement Officer, the research university may negotiate with and enter into a GMP Contract to the construction manager. The GMP Contract shall include all costs for the construction and completion of the project, including all mobilization, general conditions, profit and overhead costs of any nature. The research university shall have the right at any time, and for three (3) years following final payment, to audit the CM-At- Risk and to disallow and to recover costs not properly charged to the project. Any costs incurred above the GMP shall be paid for by the construction manager.

(5) Subcontractor Selection. After a GMP contract has been executed, or prior thereto upon written determination of the Chief Procurement Officer, the construction manager shall invite bids from prospective subcontractors. Contracts shall be entered into with the lowest responsive and responsible subcontractor. The construction manager may not self-perform any construction work for which subcontractor bids are invited.

(6) Subcontractor Prequalification. Prior to inviting bids, the construction manager may issue a request for qualifications from prospective subcontractors. Such request shall contain at a minimum a description of the general scope of the work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract. Prospective subcontractors 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 three prospective subcontractors by means of an invitation for bids. If the Chief Procurement Officer, in consultation with the construction manager, determines in writing that there are not three subcontractors for a particular area of subcontract work which meet the required qualifications, the construction manager may invite bids only from those subcontractors deemed qualified.

SECTION 3060. Fiscal responsibility.

Every contract modification, change order, or contract price adjustment under a construction contract with the State shall be subject to the procedures outlined in Sections 2-47-40 and 2-47-50.

SUBARTICLE 5.

ARCHITECT-ENGINEER, CONSTRUCTION MANAGEMENT, AND LAND SURVEYING SERVICES

SECTION 3210. Applicability and policy.

Unless acquired in conjunction with construction services, architect-engineer, construction management, and land surveying services shall be procured as provided in Section 3220 except as authorized by Sections 1560, 1570, 3035, and 3230.

SECTION 3220. Procurement procedures.

(1) Selection Committee. Each research university shall establish its own architect-engineer, construction management, and land surveying services selection committee hereinafter referred to as the selection committee, which shall be composed of those individuals whom the President of the research university determines to be qualified to make an informed decision as to the most competent and qualified

firm for the proposed project. The President of the research university or his qualified responsible designee shall sit as a permanent member of the selection committee for the purpose of coordinating and accounting for the committee's work.
(2) Advertisement of Project Description. The selection committee shall be responsible for:
(a) developing a description of the proposed project,
(b) enumerating all required professional services for that project, and
(c) preparing a formal invitation to firms for submission of information.
The invitation shall include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, the submission deadline, and how interested firms may apply for consideration. The invitation shall be formally advertised in South Carolina Business Opportunities.
(3) Response to Invitation. The date for submission of information from interested persons or firms in response to an invitation shall be not less than fifteen days after publication of the invitation. Interested architect-engineer, construction management, and land surveying persons or firms shall be required to respond to the invitation with the submission of information which the invitation requires.
(4) Interviews with Interested Firms. Following receipt of information from all interested persons and firms, the selection committee shall hold interviews with at least three persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews. A list of firms selected for interview shall be sent to all firms that submitted information in response to the advertisement, prior to the date selected for the interviews. If less than three persons or firms have responded to the advertisement, the committee shall hold interviews with those that did respond. The selection committee's determination as to which will be interviewed shall be in writing and shall be based upon its review and evaluation of all submitted materials. The written report of the committee shall specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. The purpose of the interviews shall be to provide such further information as may be required by the selection committee to fully acquaint itself with the relative qualifications of the several interested firms.
(5) Selection and Ranking of the Three Most Qualified. The agency selection committee shall evaluate each of the persons or firms interviewed in view of their:
(a) past performance;
(b) the ability of professional personnel;
(c) demonstrated ability to meet time and budget requirements;
(d) location;
(e) recent, current, and projected workloads of the firms;
(f) creativity and insight related to the project; and
(g) related experience on similar projects.
Based upon these evaluations, the selection committee shall select the three persons or firms which, in its judgment, are the best qualified, ranking the three in priority order. The selection committee's report ranking the three chosen persons or firms shall be in writing and shall include data substantiating its determinations.
(6) Notice of Selection and Ranking. When it is determined by the research university that the ranking report is final, written notification of the election immediately shall be sent to all firms interviewed.
(7) Negotiation of Contract. The Chief Procurement Officer or his designee shall negotiate a contract for services with the most qualified person or firm at a compensation which is fair and reasonable to the research university. Should the Chief Procurement Officer or his designee be unable to negotiate a satisfactory contract with this person or firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third most qualified until a satisfactory contract has been negotiated. If no agreement is reached with one of the three, additional persons or firms in order of their competence and qualifications shall be selected after consultation with the selection

committee, and negotiations shall be continued in the same manner until agreement is reached.
(8) Award. Once a contract has been successfully negotiated in accordance with Section 3220(7), notification of a contract award shall be sent to all firms responding to the invitation.
SECTION 3230. Exception for small architect-engineer and land surveying services contract.
(1) Procurement Procedures for Certain Contracts. Research universities may secure architect-engineer or land surveying service which is estimated not to exceed twenty-five thousand dollars by employing the architects, engineers, or land surveyors by direct negotiation and selection, taking into account:
(a) the nature of the project,
(b) the proximity of the architect-engineer or land surveying services to the project,
(c) the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time,
(d) past performance, and
(e) ability to meet project budget requirements.
(2) Maximum Fees Payable to One Person or Firm. Fees paid during the twenty-four month period immediately preceding negotiation of the contract by a research university for professional services performed by any one architectural-engineering or land surveying firm pursuant to Section 3230(1) shall not exceed seventy-five thousand dollars. All persons or firms seeking to render professional services pursuant to this section shall furnish the research university a list of professional services, including fees paid therefor, performed for the research university during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.
(3 Splitting of Larger Projects Prohibited. Projects shall not be broken into smaller projects for the purpose of circumventing the provisions of Section 3220 and this section.
ARTICLE 10.
INDEFINITE DELIVERY CONTRACTS
SECTION 3310. Indefinite delivery contracts for construction items, architectural-engineering and land surveying services.
(1) General Applicability. Indefinite delivery contracts may be awarded on an as-needed basis for construction services pursuant to the procedures set forth in Section 3020 and for architectural-engineering and land surveying services pursuant to Section 3220.
(a) Construction Services. When construction services contracts are awarded, each contract shall be limited to a total expenditure of two million dollars for a three -year period with individual project expenditures not to exceed five hundred thousand dollars.
(b) Architectural-Engineering and Land Surveying Services. When architectural-engineering and land surveying services contracts are awarded, each contract shall be limited to a total expenditure of seven hundred and fifty thousand dollars for a three-year period with individual project expenditures not to exceed two hundred and fifty thousand dollars.
(2) Small Indefinite Delivery Contracts. Small indefinite delivery contracts for architectural-engineering and land surveying services may be procured as provided in Section 3230. A contract established under this section shall be subject to and included in the limitations for individual and total contract amounts provided in Section 3230, and any regulations promulgated thereunder.
ARTICLE 15.

SUPPLY MANAGEMENT

SECTION 3810. Regulations for disposal.

The disposal of personal property by a research university is governed by Title 11, Chapter 35 of the South Carolina Code of Laws.

ARTICLE 17.

LEGAL AND CONTRACTUAL REMEDIES

SUBARTICLE 1.

ADMINISTRATIVE RESOLUTION OF CONTROVERSIES

SECTION 4210. Right to protest; procedure; settlement of protest; administrative review and decision; notice of decision; finality; stay of procurement pending; exclusivity of remedy.

(1) Right to Protest; Exclusive Remedy. Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the Chief Procurement Officer in the manner stated in subsection (2) below within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the Chief Procurement Officer in the manner stated in subsection (2) below within ten days of the date notification of award is posted in accordance with this code.

The rights and remedies granted in this article to a disappointed bidder, offeror, contractor, or subcontractor are to the exclusion of all other rights and remedies of such disappointed bidder, offeror, contractor, or subcontractor at common law or otherwise for the loss or potential loss of an award of a contract under this Code. The rights and remedies granted by Section 4210 and Section 4410 are not available for contracts with an actual or potential value of up to one-hundred thousand dollars.

(2) Protest Procedure. A protest under subsection (1) above shall be in writing, submitted to the Chief Procurement Officer , and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

(3) Duty and Authority to Attempt to Settle Protests. Prior to commencement of an administrative review as provided in subsection (4), the Chief Procurement Officer shall attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The Chief Procurement Officer shall have the authority to approve any settlement reached by mutual agreement.

(4) Administrative Review and Decision. If in the opinion of the Chief Procurement Officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the Chief Procurement Officer shall promptly conduct an administrative review and shall issue a decision in writing within ten days of completion of the review. The decision shall state the reasons for the action taken.

(5) Notice of Decision. A copy of the decision under subsection (4) of this section along with a statement of appeal rights under Section 4210(6) shall be mailed or otherwise furnished immediately to the protestant and any other party intervening. The Chief Procurement Officer shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and

such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section 4210(6).

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) of the South Carolina Code within ten days of posting of the decision in accordance with Section 4210(5). The request for review shall be directed to the Chief Procurement Officer , who shall forward the request to the panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the Chief Procurement Officer. The person may also request a hearing before the Procurement Review Panel.

(7) Stay of Procurement During Protests. In the event of a timely protest under subsection (1) above, the research university shall not proceed further with the solicitation or award of the contract until a decision is rendered by the Chief Procurement Officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel; provided, however, that solicitation or award of a protested contract will not be stayed if the Chief Procurement Officer, after consultation with the President of the research university, makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interests of the research university.

(8) Notice of CPO Address. Notice of the Chief Procurement Officer's address shall be included in every notice of an intended award and in every invitation for bids, requests for proposals, or other solicitation documents.

SECTION 4220. Authority to debar or suspend.

Any order of suspension or debarment issued pursuant to Title 11, Chapter 35 of the South Carolina Code of Laws shall have the same effect on procurements subject to this Code that such an order has on procurements subject to Title 11, Chapter 35.

SECTION 4230. Alternative Dispute Resolution.

As a condition of receiving the award of a contract, a research university may require any bidder or offeror to agree to voluntary or mandatory alternative dispute resolution, including but not limited to, mediation and arbitration. If a solicitation issued by a research university does not require mandatory and binding alternative dispute resolution, then Article 17, Title 11, Chapter 35 of the South Carolina Code of Laws shall govern any controversy between the research university and a contractor which arises under or by virtue of a contract.

SUBARTICLE 2.

REMEDIES

SECTION 4310. Solicitations or awards in violation of the law.

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

(2) Remedies Prior to Award. If, prior to award of a contract, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award may be:

(a) canceled;

(b) revised to comply with the law and rebid; or

(c) awarded in a manner that complies with the provisions of this code.

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

(a) the contract may be ratified and affirmed, provided it is in the best interests of the research university; or

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

(4) Entitlement to Costs. In addition to or in lieu of any other relief, when a protest submitted under Section 4210 is sustained, and it is determined that the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror may request and be awarded a reasonable reimbursement amount, including reimbursement of its reasonable bid preparation costs.

SECTION 4330. Frivolous protests.

(1) Signature on Protest Constitutes Certificate. The signature of an attorney or party on a request for review, protest, motion, or other document constitutes a certificate by the signer that the signer has read such document, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation.

(2) Sanctions for Violations. If a request for review, protest, pleading, motion, or other document is signed in violation of this subsection on or after appeal to the Procurement Review Panel, the Procurement Review Panel, upon motion or upon it's own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion, or other paper, including a reasonable attorney's fee.

SUBARTICLE 3.

REVIEW PANEL

SECTION 4410. Procurement Review Panel.

Section 11-35-4410 of the South Carolina Code of Laws applies to procurements subject to this Code to the same extent it applies to procurement subject to Title 11, Chapter 35 of the South Carolina Code of Laws.

ARTICLE 19.

SECTION 4610. Application.

The research universities are governed by Article 19, Title 11, Chapter 35 of the South Carolina Code of Laws.

ARTICLE 21.

ASSISTANCE TO MINORITY BUSINESSES

SECTION 5210. Statement of policy and its implementation.

(1) Statement of Policy. The Research Universities declare that business firms owned and operated by minority persons have been historically restricted from full participation in our free enterprise system to a degree disproportionate to other businesses. The research universities believe that it is in their best interest to assist minority-owned businesses to develop fully as a part of the state's policies and programs which are designed to promote balanced economic and community growth. The research universities, therefore, wish to ensure that those businesses owned and operated by minorities are afforded the opportunity to fully participate in the overall procurement process under this Code. The research universities, therefore, take this leadership role in setting procedures that will result in awarding contracts and subcontracts to minority business firms in order to enhance minority capital ownership, economic development and reduce dependency on the part of minorities.

(2) Implementation. The Chief Procurement Officers of the research universities and their designees shall implement the policy set forth in subsection (1) of this section by actively seeking opportunities to involve minority business and using the qualification procedures referenced in this Code in evaluating and choosing qualified contractors and suppliers in accordance with provisions of this Code.

Research University Procurement Regulations For Research Infrastructure.
(Statutory Authority: Chapter 51, Title 11 of the South Carolina Code of Laws)
19-445.2000. Research University Procurement Regulations
19-445.2015. Ratification.
2030. Competitive Sealed Bidding--The Invitation for Bids.
2035. [Repealed].
2040. The Official State Government Publication.
2045. Receipt and Safeguarding of Bids.
2050. Bid Opening.
2055. Bid Acceptance and Bid Evaluation.
2060. Telegraphic Bids.
2065. Rejection of Bids.
2070. Rejection of Individual Bids.
2075. All or None Qualifications.
2085. Correction or Withdrawal of Bids; Cancellation of Awards.
2090. Award.
2095. Competitive Sealed Proposals.
2100. Blanket Purchase Agreements
2105. Sole Source Procurements.
2110. Emergency Procurements.
2125. Responsibility of Bidders and Offerors.
2140. Specifications.
2145. Construction, Architect-Engineer, Construction Management, and Land Surveying Services.
2152. Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.
2000. Research University Procurement Regulations.
The term "Research University or Research Universities" means Clemson University, The Medical University of South Carolina, and/or The University of South Carolina – Columbia.. The term "board" means the South Carolina State Budget and Control Board. These Regulations are adopted by the Research Universities, as approved by the Board, in order to establish policies, procedures, and guidelines relating to the procurement, management, and control, of supplies, services, and construction, as applicable, under the authority of Section 11-51-190 and the Research University Procurement Code for Research Infrastructure. .. Nothing contained in these Rules and Regulations shall be construed to waive any rights, remedies or defenses the Research University might have under any laws of the State of South Carolina.

19-445.2015. Ratification.

A. Unauthorized Procurements.

The ratification of an act obligating the Research University in a contract by any person without the requisite authority to do so by an appointment or delegation under the procurement Code rests with the President of the Research University who has the authority to ratify all such acts. It is prohibited for a procurement officer to ratify such acts.

2030. Competitive Sealed Bidding--The Invitation for Bids.

The invitation for bids shall be used to initiate a competitive sealed bid procurement and shall include the following, as applicable:

(1) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information;

(2) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description;

(3) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and

(4) Instructions to bidders regarding how to identify those portions of their bid which they consider to be proprietary information or otherwise exempt from disclosure. Bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of seven (7) days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer.

2040. The Official State Government Publication.

The name of the official state government publication shall be known as the "South Carolina Business Opportunities."

2045. Receipt and Safeguarding of Bids.

A. Procedures Prior to Bid Opening.

All bids (including modifications) received prior to the time of opening shall be kept secure and, except as provided in Subsection B below, unopened. If an invitation for bids is canceled, bids shall be returned to the bidders. Necessary precautions shall be taken to insure the security of the bid. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to the Research University employees, and then only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

B. Unidentified Bids.

Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the Chief Procurement Officer. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the aforesaid official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids' number, and his signature, and then shall immediately reseal the envelope.

2050. Bid Opening.
A. Procedures.
The procurement officer or his designee shall decide when the time set for bid opening has arrived, and shall so declare to those present. He shall then personally and publicly open all bids received prior to that time, and read aloud so much thereof as is practicable, including prices, to those persons present and have the bids recorded. The amount of each bid and such other relevant information, together with the name of each bidder, shall be tabulated. The tabulation shall be open to public inspection.
B. If it becomes necessary to postpone a bid opening, the procurement officer shall issue the appropriate amendments to the solicitation postponing or rescheduling the bid opening. When the procuring agency is closed due to force majeure, bid opening will be postponed to the same time on the next official business day.
C. Disclosure of Bid Information. Only the information disclosed by the procurement officer of the governmental body or his designee at bid opening is considered to be public information under the Freedom of Information Act, Chapter 4 of Title 30, until the notice of intent to award is issued.
2055. Bid Acceptance and Bid Evaluation.
When necessary for the best interest of the Research University, bid criteria to determine acceptability may include inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be measurable costs to include, but not be limited to, discounts, transportation costs, total or life cycle costs.
2060. Telegraphic Bids.
As a general rule, telegraphic bids will not be authorized. When, in the judgment of the procurement officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, sealed telegraphic bids may be authorized.
2065. Rejection of Bids.
A. Unless there is a compelling reason to reject one or more bids, award will be made in accordance to the Code. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices. As a general rule after opening, an invitation for bids should not be canceled and readvertised due solely to increased quantities of the items being procured; award should be made on the initial invitation for bids and the additional quantity required should be treated as a new procurement.
B. Cancellation of Bids Prior to Award.
When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be cancelled. Invitations for bids may be cancelled after opening, but prior to award, when such action is consistent with Subsection A above and the procurement officer determines in writing that:
(1) inadequate or ambiguous specifications were cited in the invitation;
(2) specifications have been revised;
(3) the supplies or services being procured are no longer required;
(4) the invitation did not provide for consideration of all factors of cost to the Research University-, such as cost of transporting state furnished property to bidders' plants;
(5) bids received indicate that the needs of the Research University can be satisfied by a less expensive article differing from that on which the bids were invited;
(6) all otherwise acceptable bids received are at unreasonable prices;
(7) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
(8) for other reasons, cancellation is clearly in the best interest of the Research University. Determinations

to cancel invitations for bids shall state the reasons therefore.
C. Extension of Bid Acceptance Period.
Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for readvertisement.
2070. Rejection of Individual Bids.
A. General Application.
Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.
B. Alternate Bids.
Any bid which does not conform to the specifications contained or referenced in the invitation for bids may be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.
C. Any bid which fails to conform to the delivery schedule, to permissible alternates thereto stated in the invitation for bids, or to other material requirements of the solicitation may be rejected as nonresponsive.
D. Modification of Requirements by Bidder.
Ordinarily a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the Research University, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids should be rejected in which the bidder:
(1) attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to the Research University cannot be determined;
(2) fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery;"
(3) states a price but qualified such price as being subject to "price in effect at time of delivery;"
(4) when not authorized by the invitation, conditions or qualifies his bid by stipulating that his bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement;
(5) requires the Research University to determine that the bidder's product meets state specifications; or
(6) limits the rights of the Research University under any contract clause.
E. Price Unreasonableness.
Any bid may be rejected if the procurement officer determines in writing that it is unreasonable as to price.
F. Bid Guarantee Requirement.
When a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected.
H. Exceptions to Rejection Procedures. Any bid received after the procurement officer has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the designated purchasing office or the mail room which services that purchasing office prior to the bid opening.
2075. All or None Qualifications.
Unless the invitation for bids so provides, a bid is not rendered nonresponsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the invitation for bids. However, bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualification is substantive and affects the rights of the other bidders.
2085. Correction or Withdrawal of Bids; Cancellation of Awards.
A. General Procedure.
A bidder or offeror must submit in writing a request to either correct or withdraw a bid to the procurement

officer. Each written request must document the fact that the bidder's or offeror's mistake is clearly an error that will cause him substantial loss.
B. Correction Creates Low Bid.
To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake in the judgment of the procurement officer is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.
C. Cancellation Of Award Prior To Performance.
When it is determined after an award has been issued but before performance has begun that the Research University's requirements for the goods or services have changed or have not been met, the award or contract may be canceled and either reawarded or a new solicitation issued, if the Chief Procurement Officer determines in writing that:
(1) Inadequate or ambiguous specifications were cited in the invitation;
(2) Specifications have been revised;
(3) The supplies or services being procured are no longer required;
(4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
(5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
(6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
(7) Administrative error of the procuring agency discovered prior to performance, or
(8) For other reasons, cancellation is clearly in the best interest of the State.
2090. Award.
A. Application.
The contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids.
B. The procurement officer shall award on the date announced in the Invitation for Bids, unless the procurement officer determines, and gives notice, that a longer review time is necessary. The procurement officer shall give notice of a time extension to each bidder by posting it at the location announced in the Invitation for Bids.
C. Written notice of award shall be sent to the successful bidder in procurements over $100,000.00. Notice of award shall be made available to the public on request and shall be posted at the location specified in the Invitation for Bids.
2095. Competitive Sealed Proposals.
A. Request for Proposals.
The provisions of Regulation 2040 shall apply to implement the requirements of Section 1530 (2), Public Notice.
B. Receipt and Safeguarding of Proposals.
The provisions of Regulation 2045 shall apply for the receipt and safeguarding of proposals.
C. Receipt of Proposals.
For the purposes of implementing Section 1530 (3), Receipt of Proposals, the following requirements shall be followed:
(1) Proposals shall be opened by the procurement officer in the presence of one or more witnesses at the time and place designated in the request for proposals. A tabulation of those offering a proposal shall be maintained in the project file. Contents of competing offers shall not be disclosed during the process of negotiation. All offerors must visibly mark as "confidential" each part of their proposal which they consider to be proprietary information.

D. Evaluation of Proposals.
The provisions of Regulation 2055 shall apply to implement the requirements of Section 1530(5), Evaluation Factors.
E. Minor Informalities and Irregularities in Proposals.
The provisions of Section 1520(13) shall apply to competitive sealed proposals.
G. Other Applicable Provisions.
The provisions of the following Regulations shall apply to competitive sealed proposals:
(1) Regulation 2060, Telegraphic Bids,
(2) Regulation 2065, Rejection of Bids,
(3) Regulation 2070, Rejection of Individual Bids,
(4) Regulation 2075, All or None Qualifications,
(5) Regulation 2085, Correction or Withdrawal of Bids; Cancellation of Awards, and Cancellation of Awards Prior to Performance.
2100. Blanket Purchase Agreements.
Establishment of Blanket Purchase Agreements.
(1) General. A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.
(2) Alternate Sources. To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive sources shall be given an equal opportunity to furnish supplies or services under such agreements.
(3) Terms and Conditions. Blanket purchase agreements shall contain the following provisions:
(a) Description of agreement-a statement that the supplier shall furnish supplies or services, described therein in general terms, if and when requested by the Procurement Officer, or his authorized representative, during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the supplier is in a position to furnish.
(b) Extent of obligation-a statement that the Research University is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement.
(c) Notice of individuals authorized to place calls and dollar limitations--a provision that a list of names of individuals authorized to place calls under the agreement, identified by organizational component, and the dollar limitation per call for each individual shall be furnished to the supplier by the Procurement Officer.
(d) Delivery tickets--a requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:
(1) name of supplier;
(2) blanket purchase agreement number;
(3) date of call;
(4) call number;
(5) itemized list of supplies or services furnished;
(6) quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and
(7) date of delivery or shipment.
(e) Invoices--one of the following statements:
(1) A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase

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

not permit other source selection methods to be used.
B. Definition.
An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by either the Chief Procurement Officer, the President of the Research University or designee. The existence of such conditions must create an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:
(1) the functioning of State government;
(2) the preservation or protection of property; or
(3) the health or safety of any person.
C. Limitations.
Emergency procurement shall be limited to those supplies, services, or construction items necessary to meet the emergency.
D. Conditions.
Any procurement officer may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by either the Chief Procurement Officer or the President of the Research University shall be obtained prior to the procurement.
E. Selection of Method of Procurement.
The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
F. General Procedures.
Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.
G. Written Determination.
The Chief Procurement Officer or his designee shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor.
2125. Responsibility of Bidders and Offerors.
A. State Standards of Responsibility.
Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has:
(1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
(2) a satisfactory record of performance;
(3) a satisfactory record of integrity;
(4) qualified legally to contract with the State; and
(5) supplied all necessary information in connection with the inquiry concerning responsibility.
B. Duty of Contractor to Supply Information.
The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable.
C. Demonstration of Responsibility.
The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities,

expertise, and personnel by submitting upon request:
(1) evidence that such contractor possesses such necessary items;
(2) acceptable plans to subcontract for such necessary items; or
(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
D. Justification for Contract Award.
Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible.
E. Written Determination of Nonresponsibility.
If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer of the governmental body. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.
2140. Specifications.
A. Definitions.
(1) "Brand Name Specification" means a specification limited to one or more items by manufacturers' names or catalogue number.
(2) "Brand Name or Equal Specification" means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which provides for the submission of equivalent products.
(3) "Qualified Products List" means an approved list of supplies, services, or construction items described by model or catalogue number, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.
(4) "Specification" means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service or construction item for delivery. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout the Regulations.
(5) "Specification for a Common or General Use Item" means a specification which has been developed and approved for repeated use in procurements.
B. Issuance of Specifications.
The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the Research University's needs in a cost effective manner, taking into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of the Research University that specifications permit maximum practicable competition consistent with this purpose. Specification shall be drafted with the objective of clearly describing the State's requirements. All specifications shall be written in a non-restrictive manner as to describe the requirements to be met.
C. Use of Functional or Performance Descriptions.
Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the Research University. To facilitate the use of such criteria, the Research University shall endeavor to include as a part of its purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.
D. Preference for Commercially Available Products.
It is the general policy of the Research University MUSC to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

2145. Construction, Architect-Engineer, Construction Management, and Land Surveying Services.
A. Method of Construction Contract Administration.
This Subsection contains provisions applicable to the selection of the appropriate method of administration for construction contracts, that is, the contracting method and configuration which is most advantageous to the Research University and will result in the most timely, economical, and otherwise successful completion of the construction project.
(1) Selecting the Method of Construction Contracting.
In selecting the construction contracting method, the Research University should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill state requirements.
(2) Flexibility.
The Research University shall have sufficient flexibility in formulating the project delivery approach on a particular project to fulfill the Research University's needs. In each instance, consideration should be given to all the appropriate and effective means of obtaining both the design and construction of the project.
(3) Criteria for Selection.
Before choosing the construction contracting method, a careful assessment must be made by the Research University of requirements the project must satisfy and those other characteristics that would be in the best interest of the Research University.
The amount and type of financing available for the project is relevant to the selection of the appropriate construction contracting method including what sources of funding are available.
The Research University should consider whether a price can be obtained that is fair and reasonable when considered together with the benefit to the Research University potentially obtainable from such a contract.
(4) Research UniversityDetermination.
The Research University shall make a written determination that must be reviewed by the Chief Procurement Officer. The determination shall describe the construction contracting method chosen and set forth the facts and considerations which led to the selection of that method. This determination shall demonstrate that the requirements and financing of the project were all considered in making the selection.
2152. Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.
Lease, lease/purchase, installment purchase, or rental agreements are subject to the procedures of this Code and these Regulations.