
SUBARTICLE 1

COMMITTEES AND MANAGEMENT

SEC.

- 11-35-510. Centralization of materials management authority.
11-35-530. Advisory committees.
11-35-540. Authority and duties of the board.

§ 11-35-510. Centralization of materials management authority.

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

HISTORY: 1981 Act No. 148, § 1; 1997 Act No. 153, § 1; 2006 Act No. 376, § 11.

Cross References

Provision that contracts entered into by Department of Health and Human Services with health and human services agencies be in accordance with the State Consolidated Procurement Code, see § 44-6-50.
State procurement regulations, see S.C. Code of Regulations R. 19-445.2000.

Library References

States ☞98.
Westlaw Topic No. 360.
C.J.S. States §§ 270, 280 to 288.

§ 11-35-530. Advisory committees.

The following advisory committees may be established by the board for the purpose of advising the policy committee:

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

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

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

HISTORY: 1981 Act No. 148, § 1; 1997 Act No. 153, § 1.

Cross References

State Engineer, see § 11-35-830.

Library References

States ☞44.
Westlaw Topic No. 360.

§ 11-35-1550. Small purchase procedures; when competitive bidding required.

(1) Authority. The following small purchase procedures may be utilized only in conducting procurements for governmental bodies that are up to fifty thousand dollars in actual or potential value. A governmental body may conduct its own procurement up to fifty thousand dollars in actual or potential value, and a governmental body that has received procurement certification pursuant to Section 11-35-1210 to handle the type and estimated value of the procurement may conduct the procurement under its own authority in accordance with this code. Procurement requirements must not be artificially divided by governmental bodies so as to constitute a small purchase pursuant to this section.

(2) Competition and Price Reasonableness.

(a) Purchases not in excess of two thousand five hundred dollars. Except as provided in item (d), small purchases not exceeding two thousand five hundred dollars may be accomplished without securing competitive quotations if the prices are considered reasonable. The purchasing office must annotate the purchase requisition: "Price is fair and reasonable" and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase "not in excess of" may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement officer of the governmental body suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.

(b) Purchases over two thousand five hundred dollars to ten thousand dollars. Except as provided in item (d), 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 for a small purchase over two thousand five hundred dollars but not in excess of ten thousand dollars. The award must be made to the lowest responsive and responsible sources.

(c) Purchases over ten thousand dollars up to fifty thousand dollars. Written solicitation of written quotes, bids, or proposals must be made for a small purchase over ten thousand dollars but not in excess of fifty thousand dollars. The procurement must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the designated board office. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award must be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.

(d) For public institutions of higher learning in this State excluding technical colleges, small purchase amounts to which the provisions of item (a) apply are those purchases not exceeding ten thousand dollars, and for these purchases item (b) does not apply. In addition, purchasing cards of the institution for these purchases also may be used by officials or employees of the institution as the governing board approves.

(3) All competitive procurements above ten thousand dollars must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the designated board office. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.

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

(5) For a technical college authorized by the State Board for Technical and Comprehensive Education, small purchase amounts to which the provisions of subsection (2)(a) apply are those purchases up to an amount not to exceed ten thousand dollars. If authority is approved, a technical college may use purchasing cards for these purchases up to the amount approved by the State Board for Technical and Comprehensive Education.

HISTORY: 1981 Act No. 148, § 1; 1993 Act No. 178, § 23; 1993 Act No. 164, Part II, § 11A; 1997 Act No. 153, § 1; 2006 Act No. 376, § 29; 2011 Act No. 74, Pt V, § 6, eff August 1, 2011.

Effect of Amendment

The 2011 amendment, in subsections (2)(a) and (2)(b), in the second sentences, inserted "Except as provided in subitem (d) below,"; added subsection (2)(d) relating to institutions of higher learning and purchases not exceeding ten thousand dollars; in subsection (4), substituted "subsection (2)(b)" for "Section 11-35-1550"; and added subsection (5) relating to technical colleges and purchases not exceeding ten thousand dollars.

(3) Approval or Disagreement by State Engineer's Office. The State Engineer's Office has ten days to review the data submitted by the governmental body to determine its position with respect to the particular project delivery method recommended for approval by the governmental body, and to notify the governmental body of its decision in writing. If the State Engineer's Office disagrees with the project delivery method selected, it may contest it by submitting the matter to the board for decision. Written notification by the State Engineer's Office to the governmental body of its intention to contest the project delivery method selected must include its reasons. The board shall hear the contest at its next regularly scheduled meeting after notification of the governmental body. If the board rules in support of the State Engineer's Office position, the governmental body shall receive written notification of the decision. If the board rules in support of the governmental body, the governmental body must be notified in writing and by that writing be authorized to use that project delivery method as previously recommended by the governmental body on the particular construction project.

HISTORY: 1981 Act No. 148, § 1; 1997 Act No. 153, § 1; 2008 Act No. 174, § 12.

Editor's Note

2008 Act No. 174, § 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

Library References

States 98.

Westlaw Topic No. 360.

C.J.S. States §§ 270, 280 to 288.

§ 11-35-3015. Source selection methods assigned to project delivery methods.

(1) Scope. This section specifies the source selection methods applicable to procurements for the project delivery methods identified in Section 11-35-3005 (Project delivery methods authorized), except as provided in Sections 11-35-1550 (Small Purchases), 11-35-1560 (Sole Source Procurement), and 11-35-1570 (Emergency Procurements).

(2) Design-bid-build:

(a) Design. Architect-engineer, construction management, and land surveying services. The qualifications based selection process in Section 11-35-3220 (Qualifications Based Selection Procedures) must be used to procure architect-engineer, construction management, and land surveying services, unless those services are acquired in conjunction with construction using one of the project delivery methods provided in Section 11-35-3015 (3), (5), (6), (7), and (8).

(b) Construction. Competitive sealed bidding, as provided in Section 11-35-1520 (Competitive Sealed Bidding), must be used to procure construction in design-bid-build procurements.

(3) Construction Management at-risk. Contracts for construction management at-risk must be procured as provided in either Section 11-35-1520 (Competitive Sealed Bidding) or Section 11-35-1530 (Competitive Sealed Proposals).

(4) Operations and Maintenance. Contracts for operations and maintenance must be procured as set forth in Section 11-35-1510 (Methods of Source Selection).

(5) Design-build. Contracts for design-build must be procured by competitive sealed proposals, as provided in Section 11-35-1530 (Competitive Sealed Proposals), except that the regulations may describe the circumstances under which a particular design-build procurement does not require the submission of proposal development documents as required in Section 11-35-3024(2)(b).

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

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

(8) Other. Contracts for an alternate project delivery method approved pursuant to Section 11-35-3005(2) must be procured by a source selection method provided in Section 11-35-1510, as specified by the authority approving the alternative project delivery method.

HISTORY: 2008 Act No. 174, § 3.

Provisions of this section constituting exception to requirements governing competitive sealed bidding in § 11-35-1520, see § 11-35-1510.

This section governing procurement of architect-engineer, construction management, and land surveying services, with exceptions, see § 11-35-3210.

Consolidated Procurement Code regulations, construction, architect engineer, construction management, and land surveying services, see S.C. Code of Regulations R. 19-445.2145.

Library References

States 98.

Westlaw Topic No. 360.

C.J.S. States §§ 270, 280 to 288.

Research References

Encyclopedias

S.C. Jur. Construction Law § 16, Construction Contracts With the State of South Carolina.

Attorney General's Opinions

Under Section 11-35-3210, it is the policy of the South Carolina Procurement Code to obtain architectural services on the basis of demonstrated competence and qualifications for a particular service at fair and reasonable prices; under the Procurement Code, Section 11-35-3220(3), design firms must furnish any information which a particular invitation may require; pursuant to Section 11-35-3220(4), at least five (5) firms must be interviewed, unless less than five (5) respond. Under Section 11-35-3220(5), the firms interviewed must be selected and ranked based on certain statutory criteria. A contract may then be negotiated under Section 11-35-3220(7); while the State does not require Architects to bid on State construction projects, the Code does not prohibit a State agency from requesting a design firm to inform that agency of

the fee which it will seek if selected to provide services on a prospective project for information purposes. 1981 S.C. Op. Atty.Gen. 103, 1981 S.C. Op. Atty.Gen. No. 81-81, (Sept. 23, 1981) 1981 WL 96607.

The services of a construction manager should be specifically outlined for any proposed public project and should be publicly advertised for in a newspaper of general circulation in the State at least once along with a request for a resume of qualifications. The architect may not add those services by contract amendment for an additional fee under a standard AIA contract previously entered into pursuant to advertised selection of architects for architectural services only. 1980 S.C. Op. Atty.Gen. 60, 1980 S.C. Op. Atty.Gen. No. 80-30, (March 12, 1980) 1980 WL 81914.

§ 11-35-3230. Exception for small architect-engineer and land surveying services contract.

(1) Procurement Procedures for Certain Contracts. A governmental body securing architect-engineer or land surveying service which is estimated not to exceed twenty-five thousand dollars may award contracts by direct negotiation and selection, taking into account:

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

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

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

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

HISTORY: 1981 Act No. 148, § 1; 1993 Act No. 178, § 34; 1997 Act No. 153, § 1; 2006 Act No. 376, § 45; 2008 Act No. 174, § 17.

Editor's Note

2008 Act No. 174, § 21, provides as follows:

"This act takes effect upon approval by the Governor and applies to solicitations issued on or after January 1, 2008."

(c) the supplies, services, information technology, or construction being procured are no longer required;

(d) the solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;

(e) proposals received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the proposals were requested;

(f) all otherwise acceptable proposals received are at unreasonable prices;

(g) the proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

(h) for other reasons, cancellation is clearly in the best interest of the State.

(2) Determinations to cancel a request for proposals shall state the reasons therefor.

C. Extension of Bid Acceptance Period.

Should administrative difficulties be encountered after opening which may delay award beyond offeror's acceptance periods, the relevant offerors should be requested, before expiration of their offers, to extend the acceptance period (with consent of sureties, if any).

D. Return of Proposals

If a request for proposals is canceled, proposals shall be returned to the offerors.

HISTORY: Added by State Register Volume 31, Issue No. 5, eff May 25, 2007.

Editor's Note

For applicability of amendments to R. 19-445 promulgated by State Register Volume 31, Issue No. 5, eff May 25, 2007, see R. 19-445.2000(E).

19-445.2100. Small Purchases and Other Simplified Purchasing Procedures.

A. Authority.

Small purchases (under \$50,000) shall be made as provided in Section 11-35-1550. For small purchases over ten thousand dollars, bidders must be provided reasonable time to prepare their bids, no less than seven (7) days after notice is provided as required by Section 11-35-1550(2)(c), unless a shorter time is deemed necessary for a particular procurement as determined in writing by the head of the purchasing agency or his designee. In accordance with Section 11-35-1550(2)(c), an agency may:

(1) solicit written quotes, as further specified in Section 11-35-1550(2)(c);

(2) solicit bids in accordance with Section 11-35-1520, Competitive Sealed Bidding, Section 11-35-1525, Competitive Fixed Price Bidding, or Section 11-35-1528, Competitive Best Value Bidding; or

(3) solicit proposals in accordance with Section 11-35-1530, Competitive Sealed Proposals.

B. Establishment of Blanket Purchase Agreements.

(1) General. A blanket purchase agreement is a simplified method of filling repetitive needs for small quantities of miscellaneous supplies, services, or information technology 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, services, or information technology 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, services, or information technology, 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 State 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, services, or information technology 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, services, or information technology 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. Documentation of calls shall be limited to essential information. Forms may be developed for this purpose locally and be compatible with the Comptroller General's Office STARS system.

E. Receipt and Acceptance of Supplies or Services.

Acceptance of supplies, services, or information technology shall be indicated by signature and date on the appropriate form by the authorized State representative after verification and notation of any exceptions.

F. Review Procedures.

The governmental body 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.

HISTORY: Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007.

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