
AGENCY: Division of Procurement Services

SUBJECT: Audit and Certification – Midlands Technical College Enterprise Campus Authority

Procurement Audit

In accordance with Section 59-53-1784(B) of the South Carolina Code of Laws, the Division of Procurement Services has reviewed the procurement system of the Midlands Technical College Enterprise Campus Authority (ECA). That report recommended, and the ECA revised its procurement policy to include the definition of State-term Contracts in Section 310 and to require the ECA to use those contracts whenever possible. The audit report is submitted as information only.

Request for Re-authorization of Procurement Policy

The ECA requests that the State Fiscal Accountability Authority (Authority) reapprove the ECA's Procurement Policy with amendments. In the proposed amended policy, the ECA has made a limited number of revisions to the existing policy, which revisions largely mirror 2019 changes to the South Carolina Consolidated Procurement Code. The attached Exhibit 1 contains the proposed amended policy and a summary of changes to the existing policy.

The ECA makes this request in accordance with Section 59-53-1784(B) of the South Carolina Code of Laws, which exempts the ECA from the South Carolina Consolidated Procurement Code, provided the ECA adopts a procurement policy requiring competitive solicitations. As a condition of adoption, the statute requires that the policy be filed with and approved by the Authority. The Budget and Control Board originally approved the procurement policy at its January 2005 meeting. The Authority last reapproved the procurement policy at its September 20, 2016, meeting.

AUTHORITY ACTION REQUESTED:

Under authority of Code Sections 11-35-1230 and 59-53-580(b),

1. Receive the Midlands Technical College Enterprise Campus Authority audit report as information only; and
2. As requested by the Midlands Technical College Enterprise Campus Authority, reapprove the Midlands Technical College Enterprise Campus Authority's procurement policy through June 30, 2026.

ATTACHMENTS: Agenda item worksheet and attachments

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

Meeting Scheduled for: May 31, 2022

Regular Agenda

1. Submitted by:

- (a) Agency: Division of Procurement Services
(b) Authorized Official Signature:


John St. C. White, Materials Management Officer

2. Subject: Audit and Certification

3. Summary and Background Information:

Procurement Audit

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The ECA makes this request in accordance with Section 59-53-1784(B) of the South Carolina Code of Laws, which exempts the ECA from the South Carolina Consolidated Procurement Code, provided the ECA adopts a procurement policy requiring competitive solicitations. As a condition of adoption, the statute requires that the policy be filed with and approved by the Authority. The Budget and Control Board originally approved the procurement policy at its January 2005 meeting. The Authority last reapproved the procurement policy at its September 20, 2016 meeting.

4. What is Authority asked to do?

1. Receive the audit report as information only; and
2. As requested by the ECA, reapprove the ECA's Procurement Policy, as amended, through June 30, 2026.

5. What is recommendation of the submitting agency involved?

1. Receive the audit report as information only; and
2. Reapprove the ECA's Procurement Policy, as amended, through June 30, 2026.

6. Private Participant Disclosure – Check one:

- ☒ No private participants will be known at the time the Authority considers this agenda item.
☐ A Private Participant Disclosure form has been attached for each private participant.
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

7. Recommendation of other office (as required)?

- (a) Authorized Signature: _____
(b) Office Name: _____

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

8. List of Supporting Documents:

- (a) Exhibit 1 – MTCECA Changes to 2016 Procurement Policy
 - (b) ECA Procurement Policy, as amended
 - (c) ECA Appendix A
 - (d) ECA Independent Procurement Audit Report
 - (e) S.C. Code Ann. § 11-35-1230
 - (f) S.C. Code Ann. § 59-53-1784 (B)
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9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

April 5, 2022

Mr. Delbert H. Singleton Jr.
Director
Division of Procurement Services
6th Floor-Wade Hampton Building
Columbia, South Carolina 29201

Subject: Midlands Technical College Enterprise Campus Authority
Procurement Audit Report

Delbert:

Per S.C. Code Ann. § 59-53-1784B, Midlands Technical College Enterprise Campus Authority (ECA), has submitted its procurement policy, with amendments, for State Fiscal Accountability Authority approval. Per the ECA policy, such request requires the Division of Procurement Services to audit ECA's procurement system and make a recommendation to the Authority on ECA's request for approval of its procurement policy. I have attached ECA's policy as amended, and the procurement audit report issued by the Office of Audit and Certification. I concur with the report and its recommendation that the State Fiscal Accountability Authority approve ECA's procurement policy as amended.

Sincerely,

John St. C. White
Materials Management Officer

Attachment

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

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CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

April 4, 2022

Mr. John St. C. White
Materials Management Officer
Division of Procurement Services
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Re: Midlands Technical College Enterprise Campus Authority
Procurement Audit Report

John:

Per S.C. Code Ann. § 59-53-1784B, Midlands Technical College Enterprise Campus Authority (ECA), has submitted its procurement policy, with amendments, for State Fiscal Accountability Authority approval. Per the ECA policy, such request requires the Division of Procurement Services to audit ECA's procurement system and make a recommendation to the Authority on ECA's request for approval of its procurement policy.

We audited ECA's internal procurement operating policies and procedures for the period January 1, 2018 through December 31, 2020. The objective of our audit was to determine whether the internal controls of ECA's procurement system were adequate to ensure compliance with the South Carolina Consolidated Procurement Code and ensuing regulations.

We found ECA's internal procurement operations to be consistent with its approved Procurement Policy and recommend the State Fiscal Accountability Authority approve ECA's procurement policy as amended.

Sincerely,

Crawford Milling
Director of Audit and Certification

Attachment

Midlands Technical College Enterprise Campus Authority
Changes to the 2016 Procurement Policy

Section	Change
General	Throughout the Policy, where revised Code sections were adopted containing the term "governmental body", the term is replaced with TTCECA. "Governmental body" is a defined term in the South Carolina Consolidated Procurement Code (State Code) that serves no purpose in the context of this Policy.
310 Definitions	
310 (6)	Adds State Code definition of "Chief Procurement Officer"
310(37)	Adds definition of "Term Contract" (commonly known as State Term Contract) consistent with the definition in the State Code and requires TTCECA to use such contracts were available
410 Public Access to Procurement Information	
410(C)	Adds language consistent with the State Code requiring MTCECA to promulgate policies regarding the public availability and disposition of documents submitted by vendors in response to a solicitation.
410 (E)	Adds guidance consistent with that found in the State Code for keeping portions of a solicitation confidential contingent upon execution of a nondisclosure agreement
410 (F)	Adds language consistent with the State Code on the deadline for providing documentation upon request of actual bidders made after the posting of award or intent to award a contract
841 Approvals by State Fiscal Accountability Authority	
	Adds language regarding the history of MTCECA Procurement Policy approvals.
1520 Competitive Sealed Bidding	
1520 (10)	Modifies period MTCECA must wait after posting a notice of intent to award before a contract is formed from ten days to seven business days which is consistent with the State Code and modifications to Section 1410.
ARTICLE 15	Adds the term "ARTICLE 15" providing context for the existing SUBARTICE 3.
SUBARTICLE 3	Regulations for Sale, Lease, Transfer, and Disposal
3820	Adds a cross reference to Appendix A of the Policy. Change is immaterial.
ARTICLE 17. LEGAL AND CONTRACTUAL REMEDIES	
4210	Modifys protest procedures to parallel the 2019 changes to the State Code.
4230	Modifies section on resolution of contract controversies to conform the limitation periods for filing a dispute to be consistent with those set forth in the State Code.
SUBARTICLE 3. REVIEW PANEL	
4410	Modifies the second paragraph of this section to adopt language in the State Code regarding the Procurement Review Panel's decision being final as to administrative review and providing for appeal of that decision to the court of appeals rather than circuit court.

**MIDLANDS TECHNICAL COLLEGE
ENTERPRISE CAMPUS AUTHORITY**

**PROCUREMENT POLICY
ARTICLE 1**

GENERAL PROVISIONS

SECTION 10 Citation.

This document shall be known and may be cited as the Midlands Technical College Enterprise Campus (MTCECA) Authority Procurement Policy".

(a) As used in this document, unless the context clearly indicates otherwise, "MTCECA Procurement Policy" or "Procurement Policy" means this document including Appendix A, attached hereto, which is incorporated into this document by reference as if it were set out in this document in its entirety.

(b) Unless otherwise stated, all references to codes, procedures or policies pertain to this MTCECA Procurement Policy.

(c) The MTCECA Procurement Policy is adopted pursuant to Section 59-53-1784(B) of the South Carolina Code of Laws.

(d) Every solicitation, and every advertisement, notice or award of a solicitation issued or published pursuant to this Procurement Policy shall state as follows: PURSUANT TO SECTION 59-53-1784(B), THIS PROCUREMENT IS CONDUCTED IN ACCORDANCE WITH THE MTCECA PROCUREMENT POLICY.

SECTION 20 Purpose and policies.

The underlying purposes and policies of the MTCECA Procurement Policy are:

(a) to provide increased economy in MTCECA procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the MTCECA and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act of 1991, as amended;

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

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

(d) to permit the continued development of explicit and thoroughly considered procurement policies and practices;

(e) to require the adoption of competitive procurement policies and practices by MTCECA;

(f) to ensure the fair and equitable treatment of all persons who deal with MTCECA; and

(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 MTCECA procurement process.

SECTION 30 Obligation of good faith.

Every contract or duty within the MTCECA Procurement Policy 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 35 MTCECA may not designate surety company.

If the MTCECA enters into a procurement contract and requires the bidder to provide a surety bond to secure the bid or the performance or payment of the contract, MTCECA may not require that the surety bond be

furnished by a particular surety company or through a particular agent or broker.

SECTION 40 Application of MTCECA Procurement Policy.

(1) General Application. This MTCECA Procurement Policy applies only to contracts solicited or entered into after the approval of MTCECA Procurement Policy by the State Fiscal Accountability Authority unless the parties agree to its application to a contract entered into prior to that date.

(2) Application to Procurement. The MTCECA Procurement Policy is authorized by Section 59-53- 1784(B) and applies to every procurement of supplies, services, or construction by Midlands Technical College Enterprise Campus Authority for matters associated with the Enterprise Campus as that term is defined in Section 59-53-1781.

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

(4) The acquisition of any facility or capital improvement by a foundation or eleemosynary organization on behalf of or for the use of MTCECA which involves the use of public funds in the acquisition, financing, construction, or current or subsequent leasing of the facility or capital improvement is subject to the provisions of this Procurement Policy in the same manner as MTCECA. The definition and application of the terms "acquisition", "financing", "construction", and "leasing" are governed by standards and principles established by the State Auditor.

(5) This Procurement Policy, including the accompanying Appendix, does not apply to any construction on real property if (a) the property has been leased by the MTCECA to a non-public entity, (b) the lease was approved pursuant to Section 59-53-1784(A), and (c) the construction is paid for entirely by non-public funds. All construction performed to facilities on the Enterprise Campus, or on real property owned by the MTCECA, shall be performed in compliance with the fire, life and safety codes administered by the State Engineer pursuant to Section 10-1-180, the same as any other public building.

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 this Procurement Policy shall be retained in an official contract file of MTCECA. Such determinations shall be documented in sufficient detail to satisfy the requirements of audit as provided for in Section 1230.

SUBARTICLE 5. DEFINITIONS

SECTION 310 Definitions.

Unless the context clearly indicates otherwise:

(2) "Board" means the governing body of the MTCECA.

(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 Officer" means the person, above the level of procurement officer, designated in writing as such by the MTCECA Agency Head.

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

(7) "Construction" means the process of building, altering, repairing, remodeling, improving, or demolishing any Midlands Technical College or MTCECA 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.

(8) "Contract" means all types of agreements, for the procurement 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 MTCECA.

(13) "Days" means calendar days. In computing any period of time prescribed by this Procurement Policy, or by any order of the Procurement Review Panel, 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 procedure.

(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 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.

(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 MTCECA, 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 the procurement officer for proposals to provide supplies, services, or construction which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to MTCECA. The award of the contract must be made on the basis of evaluation factors that 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.

(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 MTCECA.

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

(33) "State Engineer" means the person holding the position as head of the state engineer's office.

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

(38) "MTCECA" means the Midlands Technical College Enterprise Campus Authority.

SUBARTICLE 7

PUBLIC ACCESS TO PROCUREMENT INFORMATION

SECTION 410 Public access to procurement information.

(A) 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.

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

(C) Evaluative documents predecisional 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 predecisional deliberations.

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

(D) For all documents submitted in response or with regard to any solicitation or other request, the person submitting the documents must comply with any instructions provided in the solicitation for making information exempt from public disclosure. Any information not marked as required by the applicable instructions may be disclosed to the public. Nothing in this subparagraph exempts documents from this disclosure in accordance with Title 30, Chapter 4.

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

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

contractual arrangements, including those used for contract negotiations, are not exempt from disclosure after the date notice of intent to award is posted, unless the notice is subsequently canceled.

SUBARTICLE 11

ACCEPTANCE OF GIFTS-IN-KIND AND CERTAIN SERVICES

SECTION 475 MTCECA may accept certain gifts-in-kind; restrictions.

MTCECA may accept gifts-in-kind of architectural or engineering services, or both, and items of construction of value less than two hundred fifty thousand dollars with the approval of the Director of the Office of General Services and designated staff of the Joint Bond Review Committee, provided that these gifts may not be made or accepted if these gifts are offered with intent of influencing the judgment of MTCECA. No other approvals or procedural requirements, including the provisions of Chapter 35, Title 11, may be imposed on the acceptance of these gifts.

ARTICLE 3 PROCUREMENT ORGANIZATION

SECTION 540 Authority and duties of MTCECA.

(3) Approval of Operational Procedures. MTCECA may develop internal operational procedures consistent with this Procurement Policy; provided, that such operational procedures are certified in writing by the chief officer as being consistent with this Procurement Policy.

DELETE

SUBARTICLE 3 EXEMPTIONS

SECTION 710 Exemptions.

Any exemption granted by the State Fiscal Accountability Authority pursuant to Section 11-35-710 of the South Carolina Code of Laws shall have the same effect on procurements conducted under this Procurement Policy that such an exemption has on procurements conducted pursuant to Title 11, Chapter 35 of the South Carolina Code of Laws. Any exemption granted by Section 11-35-710 of the South Carolina Code of Laws shall have the same effect on procurements conducted under this Procurement Policy that such an exemption has on procurements conducted pursuant to Title 11, Chapter 35 of the South Carolina Code of Laws.

SUBARTICLE 5

SECTION 840 Delegation of authority.

Subject to this Procurement Policy, the MTCECA agency head may delegate authority to designees.

SECTION 841 Approvals by State Fiscal Accountability Authority.

The MTCECA Procurement Policy was approved by the State Fiscal Accountability Authority (formerly the Budget and Control Board) on February 23, 2010. The MTCECA Procurement Policy shall be resubmitted to the State Fiscal Accountability Authority for re-approval during the first quarter of the fifth calendar year following each approval. The MTCECA Procurement Policy expires at the end of the second quarter of the fifth calendar year following approval unless re-approved by the State Fiscal Accountability Authority.

History: B&CB approved in 1/25/2005. Approved reauthorization of on 6/30/2010. Reauthorized 9/3/2013, and finally September 20, 2016.

SUBARTICLE 9 AUDITING

SECTION 1230 Auditing

(1) The Materials Management Office in consultation with MTCECA shall develop written plans for the auditing of procurements conducted pursuant to this Procurement Policy. Auditors from the Materials Management Office shall review the adequacy of the MTCECA internal controls in order to ensure compliance with the requirement of this Procurement Policy. Any noncompliance discovered through audit must be transmitted in management letters to the MTCECA and the State Fiscal Accountability Authority. The auditors shall provide in writing proposed corrective action to MTCECA. Based upon audit recommendations of the Materials Management Office, the State Fiscal Accountability Authority may revoke the MTCECA's authority under this Procurement Policy. Costs associated with the internal review and audits are the responsibility of MTCECA and will be paid to the entity performing the audit.

ARTICLE 5 SOURCE SELECTION AND CONTRACT 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 that are allowable and allocable in accordance with cost principles.
- (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 and
 - (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 that 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 MTCECA contracts shall be awarded by competitive sealed bidding as provided in Section 1520 except as otherwise provided in:

- (1) Section 1525 (Fixed Priced Bidding);
- (2) Section 1528 (Competitive Best Value Bidding);
- (6) Section 1530 (Competitive Sealed Proposals);
- (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);
- (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).

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 otherwise provided for in this Procurement Policy.
- (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 as otherwise provided in this Procurement Policy. 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 at that time.
- (6) Bid Acceptance and Bid Evaluation. Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this Procurement Policy. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations 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 this Procurement Policy.
- (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 re-award of awards or contracts, after award but prior to performance may be permitted in accordance with Appendix A. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the MTCECA or fair competition shall be permitted. Except as may otherwise be provided by Appendix A, 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 by the chief 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 MTCECA'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 South Carolina firm tied with an out-of-state firm, the award must be made automatically to the South Carolina firm.

(b) Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in Fairfield, Lexington or Richland County.

(d) Tie bids involving South Carolina firms in Fairfield, Lexington or Richland County must be resolved by the flip of a coin in the office of the procurement officer and witnessed by all interested parties.

(e) In all other situations where bids are tied, the award will be made by the procurement officer 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 in the office of the chief officer or MTCECA agency head or designee and witnessed by all interested parties.

(10) Award. Unless there is a compelling reason to reject bids as prescribed by Appendix A, 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, MTCECA 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, seven business~~ten~~ days after notice is given MTCECA may enter into a contract with the bidder named in the notice in accordance with the provisions of this Procurement Policy and of the bid solicited. When only one response is received, the notice of intended award and the seven business~~ten~~-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. 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 supplies or services to be solicited by the invitation for bids, 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. 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.

(13) 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 MTCECA. 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

(I) notwithstanding Section 40-11-200(B) 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 the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to MTCECA, a contract may be entered into by competitive fixed price bidding subject to the provisions of Section 1520 and Appendix A, 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 that the MTCECA will pay for such supplies 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 MTCECA shall establish, prior to issuance of the fixed price bid, a maximum amount the MTCECA 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 MTCECA 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 MTCECA 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 1528 Competitive best value bidding.

(1) Conditions for Use. When a procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the MTCECA, a contract may be entered into by competitive best value bidding subject to the provisions of Section 1520 and Appendix A, 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 MTCECA.

(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 MTCECA in its sole discretion and not subject to protest:

- (a) operational costs that the MTCECA 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 MTCECA'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 MTCECA'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 MTCECA, 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 MTCECA, 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 1530 Competitive sealed proposals.

(1) Conditions for Use. When a procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to MTCECA, a contract may be entered into by competitive sealed proposals subject to the provisions of Section 1520, unless otherwise provided for in this section. Subject to the requirements of Section 3220, the MTCECA may provide that it is either not practicable or not advantageous to MTCECA to procure specified types of supplies, services, or construction by competitive sealed bidding.

(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 procedures of the MTCECA. A tabulation of proposals shall be prepared and shall be open for public inspection after contract award.

(4) Request for Qualifications. Prior to soliciting proposals, the procurement officer may issue a request for qualifications from prospective offerors. Such request shall contain at a minimum a description of the supplies 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 only on their qualifications, experience, and ability to perform the requirements of the contract.

After receipt of the responses to the request for qualifications from prospective offerors, the prospective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two prospective offerors by means of a request for 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, discussions may be conducted with apparent responsive offerors for the purpose of clarification to assure full understanding of the requirements of the request for proposals. All offerors, whose proposals, in MTCECA's sole judgment, need clarification, shall 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 weighting that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to the MTCECA, 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, may, in its 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 MTCECA, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by MTCECA in its 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

MTCECA, with the second, and then the third, and so on, ranked offerers to such level of ranking as determined by MTCECA in its 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, it may reopen negotiations with any offerer with whom it previously negotiated; or

(d) if, after following the procedures set forth in this subsection, 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 offerers must be allowed to submit their best and final offers.

(e) In conducting negotiations, there must be no disclosure of any confidential information derived from proposals and negotiations submitted by competing offerers.

(9) Award. Award must be made to the responsive offerer whose proposal is determined in writing to be the most advantageous to the MTCECA, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the MTCECA 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 MTCECA, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the MTCECA fiscal officer, and it is determined in writing by the chief officer, that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

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

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

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

SECTION 1550 Bid procedures for Small Purchases.

(1) The following small purchase procedures may be utilized in conducting procurements for MTCECA that are less than one hundred thousand dollars in actual or potential value. Procurement requirements must not be artificially divided by MTCECA so as to constitute a small purchase under this section.

(2) Competition and Price Reasonableness.

(a) Purchases Not in Excess of Ten Thousand Dollars. Small purchases not exceeding ten thousand dollars may be accomplished without securing competitive quotations if the prices are considered to be reasonable.

(c) Purchases from ten thousand one cents to one hundred thousand dollars. Written 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 source.

(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 one hundred thousand dollars must have written solicitations of sealed bids or proposals from a minimum of three qualified sources of supply and be advertised at least once in the South Carolina Business Opportunities publication.

SECTION 1560 Sole source procurement.

A contract may be awarded for a supply, service, or construction item without competition when, the MTCECA agency head, or a designee above the level of the procurement officer, determines in writing that there is only one source for the required supply, service, or construction item.

Written documentation must include the determination and basis for the proposed sole source procurement. Any delegation of authority respect to sole source determinations must be submitted in writing to the board. In cases of reasonable doubt, competition must be solicited. Any decision by MTCECA that 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.

Any violation of this procedure by MTCECA shall, upon recommendation of the Materials Management Office and with approval of the majority of the State Fiscal Accountability Authority, result in the temporary suspension not to exceed one year of the MTCECA's ability to procure supplies, services, or construction items under this section.

SECTION 1570 Emergency procurements.

Notwithstanding any other provision of this Procurement Policy, the MTCECA agency head or a designee above the level of procurement officer 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 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.

SUBARTICLE 5 CANCELLATION OF SOLICITATIONS

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

Any solicitation under this Procurement Policy may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of MTCECA. The reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file. MTCECA 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 MTCECA 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. MTCECA may establish standards of responsibility that shall be enforced in all contracts awarded pursuant to this Procurement Policy.

(2) **Determination of Nonresponsibility.** A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with this Procurement Policy. 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 MTCECA, the Office of the Attorney General, or the procurement officer 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 a mutually determined specified date prior to the date of:

(a) the pricing of any contract awarded by competitive sealed proposals pursuant to Section 1530 or pursuant to the sole source procurement authority as provided in Section 1560 where the total contract price exceeds an amount established by the MTCECA; or

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

(2) Price Adjustment. Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to MTCECA, including profit or fee, shall be adjusted to exclude any significant sums by which MTCECA 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 MTCECA and the contractor.

(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 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; contract forms

(1) Types of Contracts. Subject to the limitations of this section, any type of contract which will promote the best interests of MTCECA may be used, except that the use of a cost-plus-a-percentage-of-cost contract shall be approved by the board. 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 MTCECA than any other type or that it is impracticable to obtain the supplies, services or construction required except under such a contract.

(2) Contract Forms. The MTCECA shall prescribe the form of the contracts to be used in connection with MTCECA purchasing and construction.

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 in a manner prescribed in Appendix A; 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 MTCECA:

(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 MTCECA by encouraging effective competition or

otherwise promoting economies.

(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 seven years. Contracts exceeding seven years must be approved by the Board.

SUBARTICLE 11 AUDIT OF RECORDS

SECTION 2220 Right to audit records.

(1) Audit of Cost or Pricing Data. All MTCECA contracts shall contain a clause setting forth the 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 officer; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the chief officer.

(2) Contract Audit. MTCECA 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 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 1520(11) (Competitive Sealed Bidding: Request for Qualifications), 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 1530(1) (Competitive Sealed Proposals, Conditions for Use), Section 1530(4) (Competitive Sealed Proposals: Request for Qualifications), Section 1530(8) (Competitive Sealed Proposals: Negotiations), Section 1530(9) (Competitive Sealed Proposals, Selection and Ranking of Prospective Offerers), Section 1530(10) (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 Offerers, Determination of Nonresponsibility), Section 1830(3) (Cost or Pricing Data, Cost or Pricing Data Not Required), Section 2010 (Types and Forms of Contracts), Section 2030(2) (Multi-Term Contracts, Determination Prior to Use), Section 3220(5) (Procurement Procedure, Selection and Ranking of the Three Most Qualified), and Section 4210(7) (Stay of Procurement During Protests, Decision to Proceed) shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. The procurement officer or MTCECA's designees 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 the MTCECA, immediate notice of the relevant facts shall be transmitted to the Attorney General.

SECTION 2430 Retention of procurement records.

All procurement records shall be retained and disposed of in accordance with MTCECA policy and procedures. 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. MTCECA shall maintain a record listing contracts to include but not limited to Section 1560 (Sole Source Procurement) or Section 1570 (Emergency Procurements). The procurement officer shall maintain these records for four years and the record shall contain:

- (a) each contractor's name;
- (b) the amount type of each contract;
- (c) a listing of supplies, services, or construction procured under each contract.

(2) Publication of Records. A copy of the record regarding sole source and emergency procurements shall be submitted to the Materials Management Office 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 2710 Issuance of specifications; duties of the MTCECA.

The MTCECA may prescribe procedures governing the preparation, maintenance, and content of specifications for supplies, services, and construction required by MTCECA.

SECTION 2730 Assuring competition.

All specifications shall be drafted so as to assure cost effective procurement of the MTCECA 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 MTCECA contracts.

ARTICLE 9

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

SUBARTICLE 1 DEFINITIONS

SECTION 2910. Definitions of terms used in this article.

As used in this article, unless the context clearly indicates otherwise:

- (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 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 MTCECA 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 MTCECA project in a manner that contributes to the control of time, cost, and quality of construction as specified in the construction management contract.

SUBARTICLE 3

CONSTRUCTION SERVICES

SECTION 3010 Method of construction contracting administration.

The method of construction contracting administration used for a construction project by the MTCECA shall be determined to be that method which is most advantageous to MTCECA and will result in the most timely, economical, and successful completion of the construction project. The MTCECA shall determine in writing 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 MTCECA construction contracts shall be awarded pursuant to the procedures set forth in Section 1520 or 1530 subject to the exceptions enumerated in subsection (2) of this section and except as provided in Sections 1550, 1560, and 1570.
- (2) The competitive processes required by subsection (1) of this section shall be subject to the following exceptions:

(a) Bid Acceptance. MTCECA solicitation shall set forth all requirements of the solicitation including, but not limited to:

(i) MTCECA, in consultation with the architect-engineer assigned to the project, shall identify all major subcontractors, who are expected to perform work for the prime contractor to or about the construction. In addition, MTCECA in consultation with the architect-engineer assigned to the project, may identify by specialty 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 solicitation is not protestable under any other provision of this Procurement Policy. Any bidder in response to a solicitation for bids shall set forth in his bid the name of only those subcontractors that will perform the work as identified in the solicitation 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 solicitation, the bidder shall list himself in the appropriate place in his bid and not subcontract any of that work except with the approval of MTCECA for good cause shown.

(ii) Failure to complete the list provided in the solicitation 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 MTCECA by the contractor that a subcontractor who was listed is not financially responsible;

(b) upon a showing satisfactory to MTCECA 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 MTCECA 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 MTCECA 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 MTCECA 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 MTCECA to be substantially unsatisfactory;

(h) upon mutual agreement of the contractor and subcontractor;

(i) with the consent of MTCECA for good cause shown.

The request for substitution must be made to MTCECA 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 Procurement Policy.

(b) A determination of responsibility must be made before award in accordance with Section 1810.

(c) When bids received pursuant to an invitation for bids conducted pursuant to Section 1520 exceeds available funds and it is determined in writing by MTCECA 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. MTCECA 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 the written approval of the chief officer based on the best interest of MTCECA.

(2) When the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the MTCECA is able to identify additional funds for the project, as certified by the appropriate fiscal officers, in the amount of the difference between the lowest base bid and the approved available funds for the project, the MTCECA shall submit its request to use the additional funds to the State Fiscal Accountability Authority and Joint Bond Review Committee in accordance with the provisions of Sections 2-47-40 and 2-47-50 of the South Carolina Code of Laws. The provisions of this paragraph apply only to those MTCECA projects that, pursuant to Section 59-53-1784, are subject to the provisions of Chapter 47, Title 2 of the South Carolina Code of Laws.

SECTION 3025 Approval of architectural, engineering or construction changes.

MTCECA 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 MTCECA. The provisions of this section do not relieve MTCECA of any other applicable statutory requirements including, but not limited to Title 29, Chapter 6 of the South Carolina Code of Laws.

SECTION 3060 Fiscal responsibility.

Every contract modification, change order, or contract price adjustment under a construction contract with MTCECA shall be subject to the provisions of Sections 2-47-40 and 2-47-50 except as otherwise provided in Section 59-53-1784.

SUBARTICLE 5

ARCHITECT-ENGINEER, CONSTRUCTION MANAGEMENT, AND LAND SURVEYING SERVICES

SECTION 3210 Applicability and policy.

It is the policy of MTCECA to announce publicly all requirements for architect-engineer, construction management, and land surveying services and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the particular type of services required and at fair and reasonable prices. This policy does not prohibit the acquisition of such services pursuant to Article 5 when such services are acquired in conjunction with construction.

SECTION 3220 Procurement procedures.

(1) Selection Committee. MTCECA 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 MTCECA agency head determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The MTCECA agency head shall serve on all selection committees.

(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. 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 MTCECA 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 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 and any other criteria identified in the invitation.

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.

(7) Negotiation of Contract. The procurement officer shall negotiate a contract for services with the most qualified person or firm at a compensation which is fair and reasonable to the MTCECA. Should the procurement officer 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.

(9) Award. Once a contract has been successfully negotiated in accordance with this section, notification of award of a contract 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. When MTCECA is securing architect-engineer or land surveying service which is estimated not to exceed fifty thousand dollars, MTCECA may employ 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 any MTCECA for professional services performed by any one architectural-engineering or land surveying firm pursuant to Section 3230(1) shall not exceed one hundred thousand dollars. All persons or firms seeking to render professional services pursuant to this section shall furnish MTCECA a list of professional services, including fees paid therefor, performed for the MTCECA 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.

(4) Splitting of Larger Projects Prohibited. MTCECA shall not break a project into small projects for the purpose of circumventing the provisions of Section 3220 and this section.

ARTICLE 15

SUBARTICLE 3

REGULATIONS FOR SALE, LEASE, TRANSFER, AND DISPOSAL

SECTION 3810 Procedures for sale, lease, transfer and disposal.

MTCECA is exempt from all laws governing the disposal of surplus property.

SECTION 3820 Allocation of proceeds for sale or disposal of surplus supplies.

The sale of all MTCECA owned supplies, property, or personal property not in actual MTCECA use shall be conducted and directed by the MTCECA. Such sales shall be held at such places and in such manner as in the judgment of the MTCECA shall be most advantageous to the MTCECA. Unless otherwise determined by MTCECA, sales shall be by either public auction or competitive sealed bid to the highest bidder.

See Appendix A of this document – MTCECA Disposal of Property – Removal of Sunset Provision – 2021 Legislation.

ARTICLE 17

LEGAL AND CONTRACTUAL REMEDIES

SUBARTICLE 1

ADMINISTRATIVE RESOLUTION OF CONTROVERSIES

SECTION 4200 Resolution.

In every procurement under this Procurement Policy, MTCECA shall include a statement in the solicitation documents relating to the procurement, the following statement: "By participating in this procurement, the bidder, offeror, contractor, or subcontractor agrees that the rights and remedies contained in the Midlands

Technical College Enterprise Campus Authority Procurement Policy are to the exclusion of all other rights and remedies for the bidder, offeror, contractor, or subcontractor against Midlands Technical College Enterprise Campus Authority at common law or otherwise for the loss or potential loss of an award of a contract under the Midlands Technical College Enterprise Campus Authority Procurement Policy." The statement shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the solicitation document.

SECTION 4210 Authority to Resolve Protested Solicitation and Awards. 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.

(a) Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the chief 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. An Invitation for Bids or Requests for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

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

(c) The rights and remedies granted in this article to a disappointed bidder, offerer, contractor, or subcontractor are to the exclusion of all other rights and remedies of such disappointed bidder, offeror, contractor, or subcontractor against the MTCECA at common law or otherwise for the loss or potential loss of an award of a contract under the MTCECA Procurement Policy.

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

(3) Duty and Authority to Attempt to Settle Protests. Prior to commencement of an administrative review as provided in subsection (4), the chief officer, MTCECA agency head, or designees thereof 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 officer, MTCECA agency head, or designees thereof shall have the authority to approve any settlement reached by mutual agreement.

(4) Administrative Review and Decision. If in the opinion of the chief officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the chief 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 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 4410(1) within ten days of posting of the decision in accordance with Section 4210(5). The request for review shall be directed to the chief officer, who shall forward the request to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the chief 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) MTCECA shall not proceed further with the solicitation or award of the contract until a decision is rendered by the chief 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 officer, or MTCECA agency head, makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interests of the MTCECA.

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 conducted under this Procurement Policy that such an order has on procurements conducted pursuant to Title 11, Chapter 35 of the South Carolina Code of Laws.

SECTION 4230 Authority to resolve contract and breach of contract controversies.

(1) Applicability. This section applies to controversies between the MTCECA and a contractor or subcontractor when the subcontractor is the real party in interest, which arises under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. The procedure set forth in this section shall constitute the exclusive means of resolving a controversy between the MTCECA and a contractor or subcontractor concerning a contract solicited and awarded under the provisions of the MTCECA Procurement Policy.

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

(3) Duty and Authority to Attempt to Settle Contract Controversies. Prior to commencement of an administrative review as provided in subsection (4), the chief officer must attempt to settle by mutual agreement a contract controversy brought under this section. The chief 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 officer, after reasonable attempt, a contract controversy cannot be settled by mutual agreement, the chief officer must 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 and a statement of appeal rights under Section 4230(6) shall be mailed or otherwise furnished immediately to all parties participating in the administrative review proceedings. The chief officer must also post a copy of the decision at a time and place communicated to all parties participating in the administrative review, and such posted decision must indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section 4230 (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 requests a further administrative review by the Procurement Review Panel under Section 4410 (1) within ten days of the posting of the decision in accordance with Section 4230 (5). The request for review must be directed to the chief officer who shall forward the request to the Procurement Review Panel and must be in writing setting forth the reasons why the person disagrees with the decision of the chief officer. The person may also request a hearing before the Procurement Review Panel.

(7) Regarding any controversy arising out of a contract between the MTCECA and a contractor, as a condition of receiving the award of a contract, MTCECA may require any bidder or offeror to agree to voluntary or mandatory alternative dispute resolution, including but not limited to, mediation and arbitration.

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 officer or the Procurement Review Panel, upon administrative review, that a solicitation or award of a contract is in violation of this Procurement Policy or other applicable provisions of law. The remedies set forth herein may be granted by either the chief officer after review under Section 4210 or by the Procurement Review Panel after review under Section 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 this Procurement Policy or other applicable provision of law, then the solicitation or proposed award may be:

- (a) canceled;
- (b) revised to comply with this Procurement Policy or other applicable provision of law and rebid; or
- (c) awarded in a manner that complies with the provisions of this Procurement Policy.

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

- (a) the contract may be ratified and affirmed, provided it is in the best interests of the MTCECA; 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 4320 Contract controversies.

Remedies available in a contract controversy brought under the provisions of Section 4230 are as follows: The chief officer or the Procurement Review Panel, in the case of review under Section 4410(1), may award such relief as is necessary to resolve the controversy as allowed by the terms of the contract or by applicable law.

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 its 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 Procurement Policy to the same extent it applies to procurements pursuant to Title 11, Chapter 35 of the South Carolina Code of Law.

Finality. Notwithstanding another provision of law, including the Administrative Procedures Act, The decision of the Procurement Review Panel is final as to administrative review and its decision may be appealed only to the ~~circuit~~ court of appeals under the provisions of the South Carolina Administrative Procedures Act pursuant to Section 1-23-380, and the filing of an appeal does not stay a decision of the panel.

ARTICLE 19 INTERGOVERNMENTAL RELATIONS SUBARTICLE 1 APPLICATION

SECTION 4610 Application

For purposes of cooperative purchasing, MTCECA is governed by Article 19, Title 11, Chapter 35 of the South Carolina Code of Laws.

ARTICLE 21 ASSISTANCE TO MINORITY BUSINESSES

SECTION 5010 Definitions of terms used in this article.

The MTCECA may develop procedures establishing detailed definitions of the following terms using, in addition to the criteria set forth in this section, such other criteria as it may deem desirable.

As used in the article, unless the context clearly indicates otherwise:

(1) "Minority person" means a United States citizen who is economically and socially disadvantaged .

(a) "Socially disadvantaged individuals" means those individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group, without regard to their individual qualities. Such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian Pacific Americans, and other minorities to be designated by MTCECA.

(b) "Economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

(2) A "socially and economically disadvantaged small business" means any small business concern which:

(a) is at least fifty-one percent owned by one or more citizens of the United States who are determined to be socially and economically disadvantaged.

(b) in the case of a concern which is a corporation, fifty-one percent of all classes of voting stock of such corporation must be owned by an individual determined to be socially and economically disadvantaged.

(c) in the case of a concern which is a partnership, fifty-one percent of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged and whose management and daily business operations are controlled by individuals determined to be socially and economically disadvantaged. Such individuals must be involved in the daily management and operations of the business concerned.

SUBARTICLE 3

ASSISTANCE TO MINORITY BUSINESSES

SECTION 5210 Statement of policy and its implementation.

(1) Statement of Policy. MTCECA recognizes 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. MTCECA believes that it is in the best interest of MTCECA to assist minority-owned businesses to develop fully as a part of the policies and programs that are designed to promote balanced economic and community growth throughout the State. MTCECA, therefore, wishes to ensure that those businesses owned and operated by minorities are afforded the opportunity to fully participate in the overall procurement process of MTCECA. MTCECA, therefore, takes 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, overall state economic development and reduce dependency on the part of minorities.

(2) Implementation. MTCECA shall implement the policy set forth in subsection (1) of this section.

SECTION 5220 Duties of the chief officer.

(1) Assistance from the Chief Officer. The chief officer shall provide appropriate staff to assist minority businesses with the procurement procedures contained in this Procurement Policy.

(3) Source Lists. The procurement officer must maintain special source lists of minority business firms detailing the products and services they provide.

SECTION 5240 Minority business enterprise (MBE) utilization plan.

(1) In order to emphasize the use of minority small businesses, the MTCECA must develop a Minority Business Enterprise (MBE) Utilization Plan. The MBE Utilization Plan must include, but not be limited to:

(b) A policy statement expressing a commitment by the MTCECA to use MBE's in all aspects of procurement;

(2) MBE utilization plans must be submitted to the Governor's Office of Small and Minority Business Assistance ("OSMBA") for approval not later than July thirtieth, annually. Progress reports shall be submitted to the OSMBA not later than ten days after the end of each fiscal quarter and must include the:

(a) Number of minority firms solicited;

(b) Number of minority bids received; and

(c) Dollar amount of minority bids awarded.

SECTION 5260 Annual report regarding contracts with certified small, minority, and women-owned businesses.

The MTCECA must report annually in writing to the board concerning the number and dollar value of contracts awarded to eligible minority businesses during the preceding fiscal year. These records shall be maintained to evaluate the progress of this program.

**MIDLANDS TECHNICAL COLLEGE
ENTERPRISE CAMPUS AUTHORITY**

**PROCUREMENT POLICY
APPENDIX A**

Paragraph 2000	MTCECA Procurement Policy
Paragraph 2005	Approval of Internal Procurement Procedures Manual.
Paragraph 2015	Ratification.
Paragraph 2030	Competitive Sealed Bidding-The Invitation for Bids.
Paragraph 2042	Pre-Bid Conferences.
Paragraph 2045	Receipt and Safeguarding of Bids.
Paragraph 2050	Bid Opening.
Paragraph 2055	Bid Acceptance and Bid Evaluation.
Paragraph 2060	Telegraphic Bids.
Paragraph 2065	Rejection of Bids.
Paragraph 2070	Rejection of Individual Bids.
Paragraph 2075	All or None Qualifications.
Paragraph 2080	Clarifications with Bidders
Paragraph 2085	Correction or Withdrawal of Bids; Cancellation of Awards.
Paragraph 2090	Award.
Paragraph 2095	Competitive Sealed Proposals.
Paragraph 2097	Rejection of Proposals
Paragraph 2100	Small Purchases and Other Simplified Purchasing Procedures.
Paragraph 2105	Sole Source Procurements.
Paragraph 2110	Emergency Procurements.
Paragraph 2125.	Responsibility of Bidders and Offerors.
Paragraph 2130.	Prequalification of Supplies and Suppliers.
Paragraph 2135.	Conditions for Use of Multi-term Contracts.
Paragraph 2140.	Specifications.
Paragraph 2145.	Construction, Architect-Engineer, Construction Management, and Land Surveying Services.
Paragraph 2152.	Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.
Paragraph 2160.	Assistance to Minority Businesses.

Paragraph 2000 MTCECA Procurement Policy

This Appendix A to the Midlands Technical College Enterprise Campus Authority (MTCECA) Procurement Policy is authorized pursuant to Section 59-53-1784 of the South Carolina Code of Laws.

The provisions included in this Appendix A supplement the procedures and requirements contained in the main portion of the MTCECA Procurement Policy. If a provision in this Appendix A is inconsistent with a provision contained in the main body of the MTCECA Procurement Policy, then the provision in the main body controls. Nothing contained in this Appendix A shall be construed to waive any rights, remedies or defenses the MTCECA might have under any laws of the State of South Carolina.

Paragraph 2005 Approval of Internal Procurement Procedures Manual.

MTCECA may develop an internal procurement procedures manual consistent with the MTCECA Procurement Policy.

Paragraph 2015 Ratification.

A. Procurement Policy. The ratification of an act obligating the MTCECA in a contract by any person without the requisite authority to do so by an appointment or delegation under this Procurement Policy rests with the MTCECA board which has the authority to ratify all such acts. It is prohibited for a Procurement Officer to ratify such acts.

B. Corrective Action and Liability. With regard to any ratification, the MTCECA Agency Head shall prepare a written determination as to the facts and circumstances surrounding the act, what corrective action is being taken to prevent reoccurrence, action taken against the individual committing the act, and documentation that the price paid is fair and reasonable.

Paragraph 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, MTCECA 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 to visibly mark as "confidential" each part of their bid which they consider to be proprietary information. 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 Officer or the MTCECA agency head or his designee.

Paragraph 2042 Pre-Bid Conferences.

(A) Pre-bid conferences may be conducted. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Notice of the conference must be included in the notice of the solicitation required by Articles 5 or 9 of this code.

(B) Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment. A potential bidder's failure to attend an advertised pre-bid conference will not excuse its responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to MTCECA.

(C) Pre-bid conferences may not be made mandatory absent a written determination by the head of MTCECA or his designee that the unique nature of the procurement justifies a mandatory pre-bid conference and that a mandatory pre-bid conference will not unduly restrict competition

Paragraph 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 MTCECA, 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 Procurement Officer, , or a designee . If a sealed bid is opened by mistake, the person who opens the bid will immediately write his/her 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.

Paragraph 2050 Bid Opening.

A. Procedures.

The Procurement Officer or 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. Postponement of Bid Opening

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 MTCECA 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 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.

Paragraph 2055 Bid Acceptance and Bid Evaluation.

When necessary for the best interest of MTCECA, 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.

Paragraph 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.

Paragraph 2065 Rejection of Bids.

A. Application. Unless there is a compelling reason to reject one or more bids, award will be made to the lowest responsible and responsive bidder. 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 State, such as cost of transporting the MTCECA 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) 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 MTCECA. Determinations to cancel invitations for bids shall state the reasons therefor.

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.

Paragraph 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. Nonresponsive Bids

Any bid that 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 that would modify requirements of the invitation for bids or limit the bidder's liability to the MTCECA 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/herself against future changes in conditions, such as increased costs, if total possible cost to the MTCECA 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/her bid by stipulating that his/her 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 MTCECA to determine that the bidder's product meets the MTCECA specifications;
or

(6) limits the rights of the MTCECA under any contract clause. Bidders may be requested to delete objectionable conditions from their bid provided that these conditions do not go to the substance, as distinguished from the form, of the bid or work an injustice on other bidders. Bidder should be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.

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.

G. Unsigned Bids.

Unsigned bids shall be rejected unless a representative of the company who has the authority to sign is present at the bid opening and if discovery is made prior to the reading of any bids for that procurement, the representative may be allowed to sign the bid.

H. Exceptions to Rejection Procedures. Any bid received after the Procurement Officer or designee 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 MTCECA mail room which services that purchasing office prior to the bid opening.

Paragraph 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.

Paragraph 2080 Clarifications with Bidders.

Apparent responsive bidder, as used in the source selection process, means a person who has submitted a bid or offer which obviously conforms in all material aspects to the solicitation. A procurement officer's decision regarding whether a bid is apparently responsive is final unless protested.

Paragraph 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 the bidder or offeror 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 or notification of intent to award, whichever is earlier has been issued but before performance has begun that the MTCECA'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 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 MTCECA, such as cost of transporting the MTCECA furnished property to bidders' plants;
- (5) Bids received indicate that the needs of the MTCECA 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 MTCECA discovered prior to performance, or
- (8) For other reasons, cancellation is clearly in the best interest of the MTCECA.

Paragraph 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 issue the notice of intent to award or award on the date announced at the bid opening, 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 at the bid opening.

C. Written notice of award shall be sent to the successful bidder in procurements over \$50,000.00. Notice of award shall be made available to the public on request and shall be posted at the location announced at the bid opening.

Paragraph 2095 Competitive Sealed Proposals.

A. Receipt and Safeguarding of Proposals.

The provisions of Paragraph 2045 apply to 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:

Proposals shall be opened publicly by the Procurement Officer or designee 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 made public record. 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 Paragraph 2055 apply to implement the requirements of Section 1530(5), Evaluation Factors.

E. Minor Informalities and Irregularities in Proposals.

The provisions of Section 1520(13) apply to competitive sealed proposals.

F. Specified Types of Supplies, Services or Construction.

(1) Pursuant to Section 3020(1), and the approval requirements of Section 3010, the following types of supplies, services, or construction may be procured by competitive sealed proposals:

(a) Architect/Engineer services and construction services to be awarded in the same contract for an indefinite delivery of a specialized service (e.g. Hazardous waste remedial action).

(b) Design/Build or Lease-Purchase contracts where there must be selection criteria in addition to price.

(d) Supplies, services, or construction, where consideration of alternative methods or systems would be advantageous to the MTCECA.

(2) The Procurement Officer shall develop and issue procedures that shall be followed when using the competitive sealed proposal method of acquisition.

G. Other Applicable Provisions.

The following paragraphs apply to competitive sealed proposals:

(1) 2060, Telegraphic Bids,

(2) 2065, Rejection of Bids,

(3) 2070, Rejection of Individual Bids,

(4) 2075, All or None Qualifications,

(5) 2085, Correction or Withdrawal of Bids; Cancellation of Awards, and Cancellation of Awards Prior to Performance.

(7) 2135 Multi-term Contracts.

Paragraph 2097 Rejection of Proposals.

A. Unless there is a compelling reason to reject one or more proposals, award will be made to the highest ranked responsible offeror or otherwise as allowed by Section 1530. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective offerors of any resulting modification or cancellation.

B. Cancellation of Solicitation Prior to Award.

(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the request for proposals shall be cancelled. A request for proposals may be cancelled after opening, but prior the issuance of an award or notification of intent to award, whichever is earlier, when such action is consistent with subsection A above and the procurement officer determines in writing that:

(a) inadequate or ambiguous specifications were cited in the solicitation;

(b) specifications have been revised;

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

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

- (e) proposals received indicate that the needs of MTCECA 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 MTCECA.
- (2) Determinations to cancel a request for proposals shall state the reasons therefore.

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.

Paragraph 2100 Small Purchases and Other Simplified Purchasing Procedures.

A. Authority.

- (1) Small purchases (under \$100,000) shall be made as provided in Section 1550. In accordance with Section 1550(2)(d), the MTCECA may:
- (a) solicit written quotes, as further specified in Section 1550(2)(d);
 - (b) solicit bids in accordance with Section 1520, Competitive Sealed Bidding, Section 1525, Competitive Fixed Price Bidding, or Section 1528, Competitive Best Value Bidding; or
 - (c) solicit proposals in accordance with Section 1530, Competitive Sealed Proposals.
- (2) In accordance with Section 1550(3), procurements made under these procedures may not be protested under Section 4210 if the total or potential value of the awarded contract(s) does not exceed \$100,000.00.

B. 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 designee, 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 MTCECA 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 blanket purchase agreements 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 MTCECA Purchase Order Form. 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 or services shall be indicated by signature and date on the appropriate form by the authorized MTCECA representative after verification and notation of any exceptions.

F. Review Procedures. The MTCECA 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.

Paragraph 2105 Sole Source Procurements.

A. Application.

The following provisions apply to all sole source procurements unless emergency conditions exist as defined in Paragraph 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.

(6) [Repealed]

The determination as to whether a procurement shall be made as a sole source shall be made by either the, MTCECA agency head or designee above the level of the procurement officer.. Such determination and the basis therefor shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. The restriction by MTCECA of a procurement to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

Paragraph 2110 Emergency Procurements.

A. Application.

The following provisions 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 MTCECA agency head or a designee above the level of Procurement Officer. 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 MTCECA;
- (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.

The MTCECA 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 MTCECA agency head, or designee above the level of Procurement Officer 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 MTCECA agency head or designee of either shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor.

Paragraph 2125 Responsibility of Bidders and Offerors.

A. MTCECA Standards of Responsibility.

Factors to be considered in determining whether the MTCECA 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 MTCECA; 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 Chief Officer or the Procurement Officer. 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.

Paragraph 2130 Prequalification of Supplies and Suppliers.

A. Qualified Products Lists.

A qualified products list may be developed with the approval of the MTCECA or the Procurement Officer of the MTCECA authorized to develop qualified products lists, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy MTCECA requirements. The procedures for the inclusion of a product on the qualified products list ("QPL") must be available to prospective vendors for consideration of their product to the list.

B. Prequalification

Prospective suppliers may be prequalified, and distribution of the solicitation may be limited to prequalified suppliers. Suppliers who meet the prequalification standards at any time shall be added to the prequalified list for subsequent solicitations. The fact that a prospective supplier has been prequalified does not necessarily represent a finding of responsibility.

Paragraph 2135 Conditions for Use of Multi-term Contracts.

A. General.

A multi-term contract is appropriate when it is in the best interest of the MTCECA to obtain uninterrupted services extending over one fiscal period, where the performance of such services involves high start-up costs, or when a changeover of service contracts involves high phase-in/phase-out costs during a transition period. The multi-term method of contracting is also appropriate when special production of definite quantities of supplies for more than one fiscal period is

necessary to best meet MTCECA needs but funds are available only for the initial fiscal period. Special production refers to production for contract performance when it requires alteration in the contractor's facilities or operations involving high start-up costs. The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds thereof. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be cancelled.

B. Objective.

The objective of the multi-term contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during changeover of service contracts.

C. Rule Inapplicable.

This Paragraph 2135 applies only to contracts for supplies or services described in Subsection A and does not apply to any other contract including, but not limited to, contracts for construction.

D. Conditions for Use.

(1) The maximum time for any multi-term contract is seven (7) years unless otherwise approved in accordance with Section 2030 . A multi-term contract may be used when it is determined in writing by the Procurement Officer that:

(a) Special production of definite quantities or the furnishing of long-term services are required to meet MTCECA needs; or

(b) a multi-term contract will serve the best interests of the MTCECA by encouraging effective competition or otherwise promoting economies in procurement.

(2) The following factors are among those relevant to such a determination:

(a) firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

(b) lower production cost because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;

(c) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality;

(d) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

E. Solicitation.

The solicitation shall state:

(1) the estimated amount of supplies or services required for the proposed contract period;

(2) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

(3) that the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either MTCECA's rights or the contractor's rights under any termination clause in the contract;

(4) that the Procurement Officer must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;

(5) whether bidders or offerors may submit prices for:

(a) the first fiscal period only;

(b) the entire time of performance only; or

(c) both the first fiscal period and the entire time of performance;

(6) that a multi-term contract may be awarded and how award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared; and

(7) that, in the event of cancellation as provided in (E) (3) of this Subsection, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

F. Award.

Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal period that award on the basis of prices for the first period does not permit the successful bidder or offeror to "buy in", that is give such bidder or offeror an undue competitive advantage in subsequent procurements.

Paragraph 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 MTCECA 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 MTCECA 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 this Appendix.

(5) "Specification for a Common or General Use Item" means a specification that 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 MTCECA 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 MTCECA that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the MTCECA'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 MTCECA. To facilitate the use of such criteria, the MTCECA shall endeavor to include as a part of their 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 MTCECA 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.

E. [Repealed]

F. [Repealed]

Paragraph 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 that is most advantageous to the MTCECA 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 MTCECA may consider the results achieved on similar projects in the past and the methods used. Consideration may be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill MTCECA requirements.

(2) Flexibility.

The MTCECA, shall have sufficient flexibility in formulating the project delivery approach on a particular project to fulfill the MTCECA'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 MTCECA of requirements the project must satisfy and those other characteristics that would be in the best interest of the MTCECA.

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 MTCECA may consider whether a price can be obtained that is fair and reasonable when considered together with the benefit to the MTCECA potentially obtainable from such a contract.

(4) MTCECA Determination.

The MTCECA shall develop and review a written determination and it shall describe the construction contracting method chosen and set forth the facts and considerations that 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.

(3) [Repealed]

D. Architect-Engineer, Construction Management and Land Surveying Services Procurement.

(2) State Engineer's Office Review. Section 59-53-1784 governs the extent to which the MTCECA must comply with the State Engineer's requirements.

Paragraph 2152 Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.

A. Justification. When MTCECA proposes to enter into an agreement other than an outright purchase, MTCECA is responsible for the justification of such action. Lease, lease/purchase, installment purchase, or rental agreements are subject to the MTCECA Procurement Policy.

Paragraph 2160 Assistance to Minority Businesses.

Subsection A. Definitions

(1) "Minority Person" means a United States citizen who is economically and socially disadvantaged.

(2) "Socially disadvantaged individuals" means those individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group without regard to their individual qualities. Such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian Pacific Americans, Women and other minorities to be designated by the board.

(3) "Economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

(4) "A socially and economically, disadvantaged small business" means any small independent business concern which:

(a) At a minimum is fifty-one (51) percent owned by one or more citizens of the United States who are determined to be socially and economically disadvantaged and who also exercise control over the business.

(b) In the case of a corporation, at a minimum, fifty-one (51) percent of all classes of voting stock of such corporation must be owned by an individual or individuals determined to be socially and economically disadvantaged who also exercise control over the business.

(c) In the case of a partnership, at a minimum, fifty-one (51) percent of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged who also exercise control over the business.

(5) "Small Business" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 C.F.R. Section 121 (1989). Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(6) "Minority Business Enterprise" is a business that has been certified as a socially and economically disadvantaged small business.

(7) "OSMBA" means the Office of Small and Minority Business Assistance of the Governor's Office.

Subsection B. Certification as a Minority Business Enterprise (MBE)

(1) A business seeking certification as a Minority Business Enterprise must submit to OSMBA an application and any supporting documentation as may be required.



**Midlands Technical College
Enterprise Campus Authority**

INDEPENDENT PROCUREMENT AUDIT REPORT

**For the audit Period:
January 1, 2018 to December 31, 2020**

**Office of Audit & Certification
Division of Procurement Services
May 11, 2021**

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INTRODUCTION

The Division of Procurement Services (DPS) audited the Midlands Technical College Enterprise Campus Authority's (MTCECA) internal procurement operating policies and procedures to determine whether, in all material respects, the internal controls of the MTCECA's approved Procurement Policy were adequate to ensure compliance with its Procurement Policy.

The management of MTCECA is responsible for its compliance with its Procurement Policy. Those responsibilities include the following:

- Identifying the MTCECA's procurement activities and understanding and complying with the Procurement Policy
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that the MTCECA administers its procurement programs in compliance with the Procurement Policy
- Evaluating and monitoring the MTCECA's compliance with the Procurement Policy
- Taking corrective action when instances of noncompliance are identified, including corrective action on audit findings of this audit

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. Projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Our review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

Total Expenditures

During the audit period, the MTCECA made expenditures as follows:

	<u>FY2018</u>	<u>FY2019</u>	<u>FY2020</u>	<u>FY2021</u>	<u>Total</u>
Small Purchase	2,575	31,118	42,119	34,083	109,896
PO's > \$10,000	-	56,540	29,205	43,045	128,790
Total Spend	<u>2,575</u>	<u>87,658</u>	<u>71,324</u>	<u>77,128</u>	<u>238,686</u>

BACKGROUND

The audit was conducted under the authority of Section 1230 of the MTCECA's approved Procurement Policy, which states in part, "The [Division of Procurement Services] in consultation with MTCECA, shall develop written plans for the auditing of procurements conducted pursuant to this Procurement Policy. Auditors from [DPS] shall review the adequacy of the MTCECA internal controls in order to ensure compliance with the requirements of this Procurement Policy."

The MTCECA Procurement Policy is authorized by SC Code Ann. § 59-53-1784(B) and applies to all procurements of supplies, services, or construction by MTCECA for matters associated with the Enterprise Campus as that term is defined in § 59-53-1781

The MTCECA Procurement Policy was originally approved by the State Budget and Control Board on January 25, 2005. Section 841 of the MTCECA Procurement Policy requires that the Policy shall be resubmitted to the State Fiscal Accountability Authority for re-approval after five years. The MTCECA Procurement Policy expires at the end of the second quarter of the fifth calendar year following approval unless re-approved by the State Fiscal Accountability Authority.

On September 20, 2016, the State Fiscal Accountability Authority re-approved the MTCECA's Procurement Policy.

SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included testing, on a sample basis, evidence about the MTCECA's compliance with its approved Procurement Policy for the period January 1, 2018 through December 31, 2021, the audit period, and performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Approved Procurement Policy and purchasing card (P-Card) procedure manual
- (2) All sole source and emergency procurement justifications, of which none were reported to DPS
- (3) Procurement transactions for the audit period as follows:
 - a) All Eight purchase orders exceeding \$10,000
 - b) Direct expenditure voucher (DEV) payments, of which there were none
 - c) A block of sequential expenditures reviewed against the use of order splitting or favored vendors
 - d) Seven P-Card transactions. During the audit period, MTCECA made P-Card expenditures as follows:

	<u>FY2018</u>	<u>FY2019</u>	<u>FY2020</u>	<u>FY2021</u>	<u>Total</u>
P-Card Purchases	3,458	2,289	3,045	-	8,792

- (4) Small and Minority Business utilization plans and reports. The following activity was reported to the Division of Small and Minority Business Contracting and Certification (SMBCC):

<u>Fiscal Year</u>	<u>\$ Goal</u>	<u>\$ Actual</u>
Q 3&4; 2018	7,660	14,480
2019	11,998	1,422
2020	12,481	836
Q 1&2; 2021	-	1,732

- (5) Information Technology acquisitions under IT Plans, of which there were none
- (6) Reporting of surplus property dispositions, and approval of trade-ins in excess of \$5,000, of which there were none
- (7) Disposition of unauthorized procurements, of which there were none

RESULTS OF AUDIT

The MTCECA was found to be in compliance with its approved Procurement Policy during the audit period.

The following minor issue was identified during the audit:

Use of State-Term Contracts

Use of State-Term Contracts Excluded From Approved Procurement Policy

We found the Authority had procured supplies from non-contract vendors when such supplies were available under state term contracts.

SC Code Ann. § 11-35-310(37) defines term contracts as “contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term.”

Recommendation: We recommend requiring the use of state “Term Contracts” as defined in SC Code Ann. § 11-35-310(37) in the Authority’s Procurement Policy.

During the audit, the MTCECA made the recommended change to its Procurement Policy.

RECOMMENDATION

Section 1230 of the Midlands Technical College Enterprise Campus Authority's Procurement Policy requires the auditors from the [Division of Procurement Services] to review the adequacy of the Midlands Technical College Enterprise Campus Authority's internal controls to ensure compliance with its Procurement Policy. Any noncompliance discovered through audit must be transmitted in management letters to the Midlands Technical College Enterprise Campus Authority and the State Fiscal Accountability Authority. The auditors shall provide in writing proposed corrective action to the Authority. This report satisfies that requirement.

We found MTCECA's internal procurement operations to be consistent with its approved Procurement Policy.

As provided in Section 841 of the Midlands Technical College Enterprise Campus Authority's Procurement Policy, we recommend that the Midlands Technical College Enterprise Campus Authority's revised Procurement Policy be approved for a period of five years.



Juwan Bailey
Senior Auditor



Crawford Milling, CPA, CGMA
Director of Audit & Certification

SECTION 11-35-1230. Auditing and fiscal reporting.

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

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

SECTION 59-53-1784. Lease agreements for construction and use of Enterprise Campus facilities; procurement policy; disposal of surplus property.

(B) For all matters associated with the Enterprise Campus, the authority is exempt from the South Carolina Consolidated Procurement Code, however, the authority shall adopt a procurement policy requiring competitive solicitations, and the policy must be filed with and approved by the State Fiscal Accountability Authority. The policy must include provisions for audit and recertification.

AGENCY: Division of Procurement Services

SUBJECT: Audit and Certification – Trident Technical College Enterprise Campus Authority

Procurement Audit

Per Section 59-53-480(B) of the South Carolina Code of Laws, the Division of Procurement Services has reviewed the procurement system of the Trident Technical College Enterprise Campus Authority (ECA). That report recommended, and the ECA revised its procurement policy to include the definition of State-term Contracts in Section 310 and to require the ECA to use those contracts whenever possible. The audit report is submitted as information only.

Request for Reapproval of Procurement Policy

The ECA requests that the State Fiscal Accountability Authority (Authority) reapprove the ECA's procurement policy with amendments. In the proposed amended policy, the ECA has made substantial revisions to the existing policy, which revisions largely mirror 2019 changes to the South Carolina Consolidated Procurement Code. The attached Exhibit 1 contains a summary of changes to the existing policy.

The ECA makes this request per Section 59-53-480(B) of the South Carolina Code of Laws, which exempts the ECA from the South Carolina Consolidated Procurement Code, provided the ECA adopts a procurement policy requiring competitive solicitations. As a condition of adoption, the statute requires that the policy be filed with and approved by the Authority. The Budget and Control Board originally approved the procurement policy at its September 2006 meeting. The Authority last reapproved the procurement policy at its September 20, 2016, meeting.

AUTHORITY ACTION REQUESTED:

Under authority of Code Sections 11-35-1230 and 59-53-480(b),

1. Receive the Trident Technical College Enterprise Campus Authority audit report as information only; and
2. As requested by the Trident Technical College Enterprise Campus Authority, reapprove the Trident Technical College Enterprise Campus Authority's procurement policy through June 30, 2026.

ATTACHMENTS:

Agenda item worksheet and attachments

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

Meeting Scheduled for: May 31, 2022

Regular Agenda

1. Submitted by:

- (a) Agency: Division of Procurement Services
(b) Authorized Official Signature:



John St. C. White, Materials Management Officer

2. Subject: Audit and Certification

3. Summary and Background Information:

Procurement Audit

Per Section 59-53-480(B) of the South Carolina Code of Laws, the Division of Procurement Services has reviewed the procurement system of the Trident Technical College Enterprise Campus Authority (ECA). That report recommended, and the ECA revised its procurement policy to include the definition of State-term Contracts in Section 310 and to require the ECA to use those contracts whenever possible. The audit report is submitted as information only.

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The ECA makes this request per Section 59-53-480(B) of the South Carolina Code of Laws, which exempts the ECA from the South Carolina Consolidated Procurement Code, provided the ECA adopts a procurement policy requiring competitive solicitations. As a condition of adoption, the statute requires that the policy be filed with and approved by the Authority. The Budget and Control Board originally approved the procurement policy at its September 2006 meeting. The Authority last reapproved the procurement policy at its September 20, 2016 meeting.

4. What is Authority asked to do?

1. Receive the audit report as information only; and
2. As requested by the ECA, reapprove the ECA's procurement policy, as amended, through June 30, 2026.

5. What is recommendation of the submitting agency involved?

1. Receive the audit report as information only; and
2. Reapprove the ECA's procurement policy, as amended, through June 30, 2026.

6. Private Participant Disclosure – Check one:

- ☒ No private participants will be known at the time the Authority considers this agenda item.
☐ A Private Participant Disclosure form has been attached for each private participant.
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

7. Recommendation of other office (as required)?

- (a) Authorized Signature: _____
(b) Office Name: _____

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

8. List of Supporting Documents:

- (a) Exhibit 1 – TTCECA Changes to 2016 Procurement Policy
 - (b) ECA Procurement Policy, as amended
 - (c) ECA Appendix A
 - (d) ECA Independent Procurement Audit Report
 - (e) S.C. Code Ann. § 11-35-1230
 - (f) S.C. Code Ann. § 59-53-480 (B)
-

9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES

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(803) 734-8018

JOHN ST. C. WHITE
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FAX: (803) 737-0639

HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

April 5, 2022

Mr. Delbert H. Singleton Jr.
Director
Division of Procurement Services
6th Floor-Wade Hampton Building
Columbia, South Carolina 29201

Subject: Trident Technical College Enterprise Campus Authority (ECA)
Procurement Audit Report

Delbert:

Per S.C. Code Ann. § 59-53-480B, Trident Technical College Enterprise Campus Authority (ECA), has submitted its procurement policy, with amendments, for State Fiscal Accountability Authority approval. Per the ECA policy, such request requires the Division of Procurement Services to audit ECA's procurement system and make a recommendation to the Authority on ECA's request for approval of its procurement policy. I have attached ECA's policy as amended, and the procurement audit report issued by the Office of Audit and Certification. I concur with the report and its recommendation that the State Fiscal Accountability Authority approve ECA's procurement policy as amended.

Sincerely,

John St. C. White
Materials Management Officer

Attachment

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



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CHAIRMAN, SENATE FINANCE COMMITTEE

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CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

April 4, 2022

Mr. John St. C. White
Materials Management Officer
Division of Procurement Services
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Re: Trident Technical College Enterprise Campus Authority
Procurement Audit Report

John:

Per S.C. Code Ann. § 59-53-480B, Trident Technical College Enterprise Campus Authority (ECA), has submitted its procurement policy, with amendments, for State Fiscal Accountability Authority approval. Per the ECA policy, such request requires the Division of Procurement Services to audit ECA's procurement system and make a recommendation to the Authority on ECA's request for approval of its procurement policy.

We audited ECA's internal procurement operating policies and procedures for the period January 1, 2018 through December 31, 2020. The objective of our audit was to determine whether the internal controls of ECA's procurement system were adequate to ensure compliance with the South Carolina Consolidated Procurement Code and ensuing regulations.

We found ECA's internal procurement operations to be consistent with its approved Procurement Policy and recommend the State Fiscal Accountability Authority approve ECA's procurement policy as amended.

Sincerely,

Crawford Milling
Director of Audit and Certification

Attachment

Trident Technical College Enterprise Campus Authority
Changes to the 2016 Procurement Policy

Section	Change
General	Throughout the Policy, where revised Code sections were adopted containing the term "governmental body", the term is replaced with TTCECA. "Governmental body" is a defined term in the South Carolina Consolidated Procurement Code (State Code) that serves no purpose in the context of this Policy.
40 Application of TTCECA Procurement Policy	
40 (3)	added language from the State Code regarding compliance with federal requirements on federally funded procurements.
40 (4)	For construction projects by a foundation or elemonsynary corporation on behalf of TTCECA, changed definitions of "acquisition," "financing," "Construction," and "leasing" to be based on "generally accepted accounting principles" rather than definitions to be "established by the State Auditor."
310 Definitions	
310 (2)	Adds State Code definition of "business day"
310 (6)	Adds State Code definition of "Chief Procurement Officer"
310(13)	Modified definition of "Day" to match definition in the State Code
310(37)	Adds definition of "Term Contract" (commonly known as State Term Contract) consistent with the definition in the State Code and requires TTCECA to use such contracts were available
410 Public Access to Procurement Information	
410 (E)	Adds guidance consistent with that found in the State Code for keeping portions of a solicitation confidential contingent upon execution of a nondisclosure agreement
410 (F)	Adds language consistent with the State Code on the deadline for providing documentation upon request of actual bidders made after the posting of award or intent to award a contract
1410 Article 5 Definitions	
1410 (8)	Adds State Code definition of "commercial product"
1411 (9)	Adds State Code definition of "commercially available off the shelf product"
1520 Competitive Sealed Bidding	
1520(9)(d)	Modifies instructions on addressing tie bids involving vendors from the same local to incorporate language from the State Code regarding quickest delivery
1520 (9)(e)	Adds provision consistent with the State Code on how to address tie bids involving MBEs
1520 (10)	Modifies requirements regarding posting notice of an intended award and providing same to all bidders to be consistent with the State Code
1528 Competitive best value bidding	
	Replaced the term "Cost" with "price" consistent with the State Code.
1530 Competitive Sealed Proposals	
1530 (4)	Modifies provision regarding prequalification of vendors to provide that the determination of how many vendors to prequalify is not protestable. This change is consistent with the State Code.
1530 (6)	Modifies provision regarding discussion with Offerors to be consistent with State Code.
1530 (8)	Modifies provision regarding negotiations to be consistent with the State Code
1540 Negotiations after unsuccessful competitive sealed bidding	

Trident Technical College Enterprise Campus Authority
Changes to the 2016 Procurement Policy

Section	Change
	Modifies section to clarified who may make a determination to negotiate a contract after unsuccessful competitive sealed bidding
1550 Small Purchases	
	Increased the no competition threshold to \$10k from \$5k consistent with State Code
1810 Responsibility of bidders and offerors	
	1810(4) Adds language from the State Code regarding immunity from suit for sharing information between governmental entities regarding a vendors responsibility in good faith
1870 Responsibility of bidders and offerors	
	1870 (4) Provides for communication among Public Procurement Units regarding bidder responsibility.
2015 Effect of a Contract Amendment	
	Adds language consistent with the State Code to the effect that a contract amendment is not effective against TTCECA unless it is in writing and signed by an officer with actual authority
2030 Multi-term Contracts	
	2030(4) Adds requirement that approval for a maximum potential duration of a contract in excess of 7 years must be granted before issuing the solicitation.
2050 Void contract terms and conditions	
	Adds provision consistent with the State Code that makes certain terms and condition void ab initio, unless such terms are expressly authorized by law
2060 Material changes prohibited	
	Provides for limits on the scope of a contract amendment that are consistent with State Code
2210 Right to Inspect plant	
	Adds a right for the chief officer to inspect contractor's plant
2420 Reporting of anticompetitive practices	
	2420(B) Adds subsection B providing for priveleged communications with the Attorney General and immunity for civil and criminal proceedings when acting in good faith. This provision is consistent with the State Code.
Article 9 Construction, Architect-Engineer, Construction Management, and Land Surveying Services	
	2910 Deletes existing definitions and replaces them with the definitions found in the State Code with the exception that TTCECA is substituted for "governmental body" wherever that term appears in the definitions.
	3005 Adds Section 3005, project delivery methods authorized, to adopt project delivery methods authorized by the State Code
	3010 Deletes existing language and replaces it with language similar to that found in Section 3010(1) of the State Code requiring selction of the project delivery methat which is most advantageous.

Trident Technical College Enterprise Campus Authority
Changes to the 2016 Procurement Policy

Section	Change
3015	Adds Section 3015 adopting the language of the State Code governing the source selection methods authorized for each project delivery method. In subsection 7, further adds language providing the TTCECA will obtain State Fiscal Accountability Authority approval before using a project delivery method that includes private sector financing.
3020	Deletes the existing language and substitutes language consistent with language from the State Code regarding procedures for competitive sealed bidding of construction in addition to those procedures found in Article 5
3021	adds section specifying conditions under which subcontractor substitution may be allowed consistent with the State Code.
3023	Adds language similar to that in the State Code on authority to authorize prequalification of bidders and sub-bidders. Instead of that authority residing with the State's Chief Procurement Officer for Construction as provided in the State Code, that authority resides with the TTCECA board.
3024	Adds language consistent with the State Code providing additional procedures applicable to procurement of certain project delivery methods consistent with the State Code.
3025	Deletes this section and replaces it with Section 3070
3070	Describe when approval of architectural, engineering, or construction changes which do not alter general scope or intent to exceed approved budget is allowed. Language is consistent with the State Code.
Subarticle 5 Architect-Engineer, Construction Management, and Land Surveying Services	
3210	Deletes last sentence of this section regarding acquisition of A/E services pursuant to Article 5 when the services are acquired in conjunction with construction. Change is consistent with the State Code and TTCECA Policy changes adopting project delivery methods authorized in State Code.
3215	Adds section adopting preference for resident design services found in State Code.
3220	Modifies procurement procedures for A/E services to conform more closely to the procedures in the State Code.
3230	Modifies small procurement procedures for A/E services to conform more closely to the procedures in the State Code.
	Revised for consistency with State Code
3245	Adds section found in State Code limiting ability of an A/E that designed a project from later performing work on that project as a contractor or subcontractor.
ARTICLE 10 Adds Article on indefinite quantity contracts adopting the language from the State Code except the Substitution of TTECA for the term "governmental body."	
ARTICLE 15 Adds the term "ARTICLE 15" providing context for the existing SUBARTICE 3.	
SUBARTICLE 3 Modifies title "Disposal of Surplus Property"	
3810	Makes immaterial modifications to the section.
3830	Adds section providing that TTCECA trade-in personal property as part of an acquisition of a like item.
ARTICLE 17. LEGAL AND CONTRACTUAL REMEDIES	
4210	Modifys protest procedures to parallel the 2019 changes to the State Code.
4215	Adds section adopting language in the State Code regarding authority to require a protestant to post a bond or irrevocable letter of credit, procedures for making claim on same, and ability to protestant to recover cost of same if they win.
4230	Modifies section on resolution of contract controversies to conform the limitation periods for filing a dispute to be consistent with those set forth in the State Code.

Trident Technical College Enterprise Campus Authority
Changes to the 2016 Procurement Policy

Section	Change
4340	Adds section regarding rights and remedies that is similar to language in the State Code.
SUBARTICLE 3. REVIEW PANEL	
4410	Modifies the second paragraph of this section to adopt language in the State Code regarding the Procurement Review Panel's decision being final as to administrative review and providing for appeal of that decision to the court of appeals rather than circuit court.

TRIDENT TECHNICAL COLLEGE ENTERPRISE CAMPUS AUTHORITY
PROCUREMENT POLICY

ARTICLE 1.
GENERAL PROVISIONS

SECTION 10. Citation.

This document shall be known and may be cited as the Trident Technical College Enterprise Campus (TTCECA) Authority Procurement Policy".

(a) As used in this document, unless the context clearly indicates otherwise, "TTCECA Procurement Policy" or "Procurement Policy" means this document including Appendix A, attached hereto, which is incorporated into this document by reference as if it were set out in this document in its entirety.

(b) Unless otherwise stated, all references to codes, procedures or policies pertain to this TTCECA Procurement Policy.

(c) The TTCECA Procurement Policy is adopted pursuant to Section 59-53-480(B) of the South Carolina Code of Laws.

(d) Every solicitation, and every advertisement, notice or award of a solicitation issued or published pursuant to this Procurement Policy shall state as follows: PURSUANT TO SECTION 59-53-480(B), THIS PROCUREMENT IS CONDUCTED IN ACCORDANCE WITH THE TTCECA PROCUREMENT POLICY.

SECTION 20. Purpose and policies.

The underlying purposes and policies of the TTCECA Procurement Policy are:

(a) to provide increased economy in TTCECA procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the TTCECA and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act of 1991, as amended;

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

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

(d) to permit the continued development of explicit and thoroughly considered procurement policies and practices;

(e) to require the adoption of competitive procurement policies and practices by TTCECA;

(f) to ensure the fair and equitable treatment of all persons who deal with TTCECA; and

(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 TTCECA procurement process.

SECTION 30. Obligation of good faith.

Every contract or duty within the TTCECA Procurement Policy 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 35. TTCECA may not designate surety company.

If the TTCECA enters into a procurement contract and requires the bidder to provide a surety bond to

secure the bid or the performance or payment of the contract, TTCECA may not require that the surety bond be furnished by a particular surety company or through a particular agent or broker.

SECTION 40. Application of TTCECA Procurement Policy.

(1) General Application. This TTCECA Procurement Policy applies only to contracts solicited or entered into after the approval of TTCECA Procurement Policy by the State Fiscal Accountability Authority unless the parties agree to its application to a contract entered into prior to that date.

(2) Application to Procurement. The TTCECA Procurement Policy is authorized by Section 59-53-480(B) and applies to every procurement of supplies, services, or construction by Trident Technical College Enterprise Campus Authority for matters associated with the Enterprise Campus as that term is defined in Section 59-53-465.

(3) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance or contract funds, TTCECA shall also comply with such federal law and authorized regulations as are mandatorily applicable and which are not presently reflected in this Procurement Policy. Notwithstanding, where federal assistance or contract funds are used in a procurement by TTCECA, requirements that are more restrictive than federal requirements shall be followed, except to the extent such action would render the TTCEA ineligible to receive federal funds whose receipt is conditioned on compliance with mandatorily applicable federal law. In those circumstances, the solicitation must identify and explain the impact of such federal laws on the procurement process, including any required deviation from this Procurement Policy.

(4) The acquisition of any facility or capital improvement by a foundation or eleemosynary organization on behalf of or for the use of TTCECA which involves the use of public funds in the acquisition, financing, construction, or current or subsequent leasing of the facility or capital improvement is subject to the provisions of this Procurement Policy in the same manner as TTCECA. The definition and application of the terms "acquisition", "financing", "construction", and "leasing" are governed by standards and generally accepted accounting principles established by the State Auditor.

(5) This Procurement Policy, including the accompanying Appendix, does not apply to any construction on real property if (a) the property has been leased by the TTCECA to a non-public entity, (b) the lease was approved pursuant to Section 59-53-480(A), and (c) the construction is paid for entirely by non-public funds. All construction performed to facilities on the Enterprise Campus, or on real property owned by the TTCECA, shall be performed in compliance with the fire, life and safety codes administered by the State Engineer pursuant to Section 10-1-180, the same as any other public building.

(6) Notwithstanding any other provision of this policy, the authority must comply with the provisions of Chapter 47 of Title 2; provided, however, only State Fiscal Accountability Authority approval is required for leases and lease purchase agreements, including ground lease agreements, the terms and conditions thereof, and the consideration involved, for the construction or use of facilities on the Enterprise Campus. Upon the expiration of the lease purchase agreements, including ground lease agreements, the private entity shall surrender unto the authority such premises with the existing buildings, other structures, and improvements constructed and located on the Enterprise Campus, in the same condition as when the construction of the buildings, other structures, and improvements were completed, only natural and normal wear and tear excepted. The approval of the State Fiscal Accountability Authority required herein for leases and lease purchase agreements, including ground lease agreements, is in lieu of or a substitute for any other approval required by any other provision of law or regulation. The full faith and credit of the State toward the lease obligations must not be pledged, and any statement to the contrary is deemed null and void as a matter of public policy.

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 this Procurement Policy shall be retained in an official contract file of TTCECA. Such determinations shall be documented in sufficient detail to satisfy the requirements of audit as provided for in Section 1230.

SUBARTICLE 5.
DEFINITIONS

SECTION 310. Definitions.

Unless the context clearly indicates otherwise:

(21) "Board" means the governing body of the TTCECA.

(2) "Business day" means a day that is neither a Saturday, Sunday, nor a state or federal holiday.

(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 officer" means the person, above the level of procurement officer, designated in writing as such by the TTCECA Agency Head.

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

(7) "Construction" means the process of building, altering, repairing, remodeling, improving, or demolishing any Trident Technical College or TTCECA 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.

(8) "Contract" means all types of agreements, for the procurement 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 TTCECA.

(13) "Days" means calendar days. In computing any period of time prescribed by this Procurement Policy, or by any order of the Procurement Review Panel, the day of the event from which the designated period of time begins to run is not included. if the final~~The last~~ day of the ~~designated~~ period ~~falls on~~computed is to be included, unless it is a Saturday, Sunday, or ~~a legal holiday for the state or federal government holiday, then in which event~~ the period ~~shall run~~runs to the end of the next ~~business day~~ which is neither a Saturday, Sunday, or such holiday.

(15) "Designee" means a duly authorized representative of a person with formal responsibilities under the procedure.

(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 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.

(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 TTCECA, 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 the procurement officer for proposals to provide supplies services, or construction which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to TTCECA. The award of the contract must be made on the basis of evaluation factors that 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.

(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 TTCECA.

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

(33) "State Engineer" means the person holding the position as head of the state engineer's office.

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

(38) "TTCECA" means the Trident Technical College Enterprise Campus Authority.

SUBARTICLE 7.

PUBLIC ACCESS TO PROCUREMENT INFORMATION

SECTION 410. Public access to procurement information.

(A) 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.

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

(C) Evaluative documents pre-decisional in nature such as inter- or intra-agency memoranda containing technical evaluations and recommendations are exempt so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the pre-decisional deliberations.

(D) 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 making information exempt from public disclosure. Any information not marked as required by the applicable instructions may be disclosed to the public. Nothing in this subparagraph exempts documents from this disclosure in accordance with Title 30, Chapter 4.

(E) TTCECA, with the approval of the Chief Officer, may keep portions of a solicitation confidential and release the information to prospective offerors only upon the execution of a nondisclosure agreement, provided the information is otherwise exempted from disclosure by law.

(F) If requested in writing before a final award by an actual bidder, offeror, contractor, or subcontractor with regard to a specific intended award or award of a contract, the procurement officer shall, within five (5) days of the receipt of any such request, make documents directly connected to the procurement activity and not otherwise exempt from disclosure available for inspection at an office of the responsible procurement officer. Without otherwise limiting any other exemptions granted by law, and except as provided herein, documents of and documents incidental to proposed contractual arrangements, including those used for contract negotiations, are not exempt from disclosure after the date notice of intent to award is posted, unless the notice is subsequently cancelled.

SUBARTICLE 11.

ACCEPTANCE OF GIFTS-IN-KIND AND CERTAIN SERVICES

SECTION 475. TTCECA may accept certain gifts-in-kind; restrictions.

TTCECA may accept gifts-in-kind of architectural or engineering services, or both, and items of construction of value less than two hundred fifty thousand dollars with the approval of the Director of the Office of General Services and designated staff of the Joint Bond Review Committee, provided that these gifts may not be made or accepted if these gifts are offered with intent of influencing the judgment of TTCECA. No other approvals or procedural requirements, including the provisions of Chapter 35, Title 11, may be imposed on the acceptance of these gifts.

ARTICLE 3.

PROCUREMENT ORGANIZATION

SECTION 540. Authority and duties of TTCECA.

(3) Approval of Operational Procedures. TTCECA may develop internal operational procedures consistent

with this Procurement Policy; provided, that such operational procedures are certified in writing by the chief officer as being consistent with this Procurement Policy.

SUBARTICLE 3. EXEMPTIONS

SECTION 710. Exemptions.

Any exemption granted by the State Fiscal Accountability Authority pursuant to Section 11-35-710 of the South Carolina Code of Laws shall have the same effect on procurements conducted under this Procurement Policy that such an exemption has on procurements conducted pursuant to Title 11, Chapter 35 of the South Carolina Code of Laws. Any exemption granted by Section 11-35-710 of the South Carolina Code of Laws shall have the same effect on procurements conducted under this Procurement Policy that such an exemption has on procurements conducted pursuant to Title 11, Chapter 35 of the South Carolina Code of Laws.

SUBARTICLE 5.

SECTION 840. Delegation of authority.

Subject to this Procurement Policy, the TTCECA agency head may delegate authority to designees.

SECTION 841 Approvals by State Fiscal Accountability Authority

The TTCECA Procurement Policy was approved by the State Budget and Control Board on September 19, 2006. The TTCECA Procurement Policy shall be resubmitted to the State Fiscal Accountability Authority for re-approval during the first quarter of the fifth calendar year following approval. The TTCECA Procurement Policy expires at the end of the second quarter of the fifth calendar year following approval unless re-approved by the State Fiscal Accountability Authority.

SUBARTICLE 9. AUDITING

SECTION 1230. Auditing

(1) The Materials Management Office in consultation with TTCECA shall develop written plans for the auditing of procurements conducted pursuant to this Procurement Policy.

Auditors from the Materials Management Office shall review the adequacy of the TTCECA internal controls in order to ensure compliance with the requirement of this Procurement Policy. Any noncompliance discovered through audit must be transmitted in management letters to the TTCECA and the State Fiscal Accountability Authority. The auditors shall provide in writing proposed corrective action to TTCECA. Based upon audit recommendations of the Materials Management Office, the State Fiscal Accountability Authority may revoke the TTCECA's authority under this Procurement Policy. Costs associated with the internal review and audits are the responsibility of TTCECA and will be paid to the entity performing the audit.

ARTICLE 5.
SOURCE SELECTION AND CONTRACT
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 that are allowable and allocable in accordance with cost principles.

(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 and

(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 that 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.

(8) "Commercial product" means supplies, other than printing, or information resources:

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

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

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

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

SUBARTICLE 3.
METHODS OF SOURCE SELECTION

SECTION 1510. Methods of source selection.

All TTCECA contracts shall be awarded by competitive sealed bidding as provided in Section 1520 except as otherwise provided in:

- (1) Section 1525 (Fixed Priced Bidding);
- (2) Section 1528 (Competitive Best Value Bidding);
- (6) Section 1530 (Competitive Sealed Proposals);
- (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);
- (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).

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 otherwise provided for in this Procurement Policy.

(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 as otherwise provided in this Procurement Policy. 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 at that time.

(6) Bid Acceptance and Bid Evaluation. Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this Procurement Policy. 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 this Procurement Policy.

(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 re-award of awards or contracts, after award but prior to performance may be permitted in accordance with Appendix A. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the TTCECA or fair competition shall be permitted. Except as may otherwise be provided by Appendix A, 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 by the chief 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 TTCECA'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 South Carolina firm tied with an out-of-state firm, the award must be made automatically to the South Carolina firm.

(b) Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in Berkeley, Charleston or Dorchester County.

(d) Tie bids involving South Carolina firms in Berkeley, Charleston or Dorchester County must be resolved by ~~the flip of a coin in the office of the procurement officer and witnessed by all interested parties awarding to the vendor with the quickest delivery time.~~

(e) Tie bids involving a business certified by the South Carolina Office of Small and Minority Business Assistance as a Minority Business Enterprise must be resolved in favor of the Minority Business Enterprise.

~~(e)(f)~~ In all other situations where bids are tied, the award will be made by the procurement officer 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 in the office of the chief officer or TTCECA agency head or designee ~~and witnessed by all interested parties.~~ All responding vendors must be invited to attend.

(10) Award. Unless there is a compelling reason to reject bids as prescribed by Appendix A, 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, TTCECA 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, on the same day that the notice is posted, 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, notice of an intended award of a contract must be given by posting the notice for seven (7) business days before entering into a contract. sixteen days after notice is given TTCECA may enter into a contract with the bidder named in the notice in accordance with the provisions of this Procurement Policy and of the bid solicited. The posting date shall appear on the face of all these notices. If a change to the posting date is necessary, notice of the revised posting date must be given by posting the notice for three (3) business days at the location identified in the solicitation and must be sent to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section. 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. 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 supplies or services to be solicited by the invitation for bids, 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. 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.

(13) 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 TTCECA. 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~~ TTCECA;
- (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 Section 40-1 1-200(B) 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 the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to TTCECA, a contract may be entered into by competitive fixed price bidding subject to the provisions of Section 1520 and Appendix A, 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 that the TTCECA will pay for such supplies 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 TTCECA shall establish, prior to issuance of the fixed price bid, a maximum amount the TTCECA 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 TTCECA 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~~As provided in the solicitation, bidders not responding to the initial fixed price bid may be added to the awarded vendors' list provided the bidder furnishes evidence of responsibility and responsiveness to the TTCECA 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 1528. Competitive best value bidding.

(1) Conditions for Use. When a procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the TTCECA, a contract may be entered into by competitive best value bidding subject to the provisions of Section 1520 and Appendix A, 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 TTCECA.

(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. ~~CostPricing~~ 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. ~~CostPrice~~ must be a factor in determination of award and cannot be weighted at less than sixty (60%) percent. Best value bid evaluation factors may include, but are not limited to, any of the following as determined by the TTCECA in its sole discretion and not subject to protest:

- (a) operational costs that the TTCECA 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 TTCECA'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 TTCECA'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~~price, 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 TTCECA, 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 TTCECA, 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 1530. Competitive sealed proposals.

(1) Conditions for Use. When a procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to TTCECA, a contract may be entered into by competitive sealed proposals subject to the provisions of Section 1520, unless otherwise provided for in this section. Subject to the requirements of Section 3220, the TTCECA may provide that it is either not practicable or not advantageous to TTCECA to procure specified types of supplies, services, or construction by competitive sealed bidding.

(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 procedures of the TTCECA. A tabulation of proposals shall be prepared and shall be open for public inspection after contract award.

(4) Request for Qualifications. Prior to soliciting proposals, the procurement officer may issue a request for qualifications from prospective offerors. Such request shall contain at a minimum a description of the supplies 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 only on their qualifications, experience, and ability to perform the requirements of the contract.

After receipt of the responses to the request for qualifications from prospective offerors, the prospective

offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two prospective offerors by means of a request for proposals. The ~~failure of a prospective offeror to be selected to receive the request for determination regarding how many proposals shall to solicit is not be grounds for protest under~~ subject to review pursuant to 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, discussions may be conducted with ~~apparent responsive~~ offerors ~~who submit proposals determined to be reasonably susceptible of being selected for award for the~~ for the purpose of clarification to assure full understanding of ~~the and responsiveness to the solicitation~~ requirements ~~of the request for proposals~~. All offerors, whose proposals, in TTCECA's sole judgment, need clarification, shall be accorded such an opportunity. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussions. In conducting discussions, there must be no disclosure of confidential information derived from proposals submitted by competing offerors.

(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 TTCECA, 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~~ After proposals have been ranked, the procurement officer, ~~may, in its in his~~ sole discretion and not subject to ~~challenge through a protest filed review~~ under Section 4210, ~~may~~ proceed in any of the manners indicated below, ~~except that in no case may confidential information derived from proposals and negotiations submitted by competing offerors be disclosed:~~

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

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

~~(d)(c)~~ ~~if, before or after following negotiations pursuant to 1530(8), the procedures set forth in this subsection, a contract is not able to be negotiated, the procurement officer may make changes to the request for proposals within the general scope of the request for proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and may provide all responsive offerors must be allowed an opportunity to submit their best and final offers, which much be re-evaluated and ranked pursuant to Section 1530(7).~~

~~(e) 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 TTCECA, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the TTCECA 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 TTCECA, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the TTCECA fiscal officer, and it is determined in writing by the chief officer, the head of the agency or the designee of either above the level of procurement officer, that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

- (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 for Small Purchases.

(1) The following small purchase procedures may be utilized in conducting procurements for TTCECA that are less than one hundred thousand dollars in actual or potential value. Procurement requirements must not be artificially divided by TTCECA so as to constitute a small purchase under this section.

(2) Competition and Price Reasonableness. (a) Purchases Not in Excess of ~~Five~~Ten Thousand Dollars. Small purchases not exceeding ~~five~~ten thousand dollars may be accomplished without securing competitive quotations if the prices are considered to be reasonable.

(b) Purchases ~~from five exceeding ten~~ thousand ~~dollars one cents up~~ to twenty five 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 exceeding~~ twenty five thousand ~~dollars one cents up~~ to fifty thousand dollars. 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 source.

(d) Purchases ~~from exceeding~~ fifty thousand ~~dollars one cents up~~ 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. Except as otherwise provided in this Procurement Policy, 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 fifty thousand dollars must be advertised at least once in the South Carolina Business Opportunities publication.

SECTION 1560. Sole source procurement.

A contract may be awarded for a supply, service, or construction item without competition when, the TTCECA agency head, or a designee above the level of the procurement officer, determines in writing that there is only one source for the required supply, service, or construction item.

Written documentation must include the determination and basis for the proposed sole source procurement. Any delegation of authority respect to sole source determinations must be submitted in writing to the board. In cases of reasonable doubt, competition must be solicited. Any decision by TTCECA 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.

Any violation of this procedure by TTCECA shall, upon recommendation of the Materials Management Office and with approval of the majority of the State Fiscal Accountability Authority, result in the temporary suspension not to exceed one year of the TTCECA's ability to procure supplies, services, or construction items under this section.

SECTION 1570. Emergency procurements.

Notwithstanding any other provision of this Procurement Policy, the TTCECA agency head or a designee above the level of procurement officer 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 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 Auction or Bankruptcy Sale

TTCECA, having knowledge of either an auction or a sale of supplies from a bankruptcy, may elect to participate. TTCECA shall (a) survey the needed items being offered 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, TTCECA shall determine the maximum price that it can pay for each item desired. At the auction or sale, TTCECA shall not exceed the maximum price so determined.

SUBARTICLE 5.

CANCELLATION OF SOLICITATIONS

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

Any solicitation under this Procurement Policy may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of TTCECA. The reasons for rejection, supported with documentation sufficient to satisfy external audit,

shall be made a part of the contract file. TTCECA 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 TTCECA 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. TTCECA may establish standards of responsibility that shall be enforced in all contracts awarded pursuant to this Procurement Policy.

(2) Determination of Non-responsibility. A written determination of non-responsibility of a bidder or offeror shall be made in accordance with this Procurement Policy. 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 non-responsibility 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 TTCECA, the Office of the Attorney General, or the procurement officer without prior written consent by the bidder or offeror.

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

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 a mutually determined specified date prior to the date of:

(a) the pricing of any contract awarded by competitive sealed proposals pursuant to Section 1530 or pursuant to the sole source procurement authority as provided in Section 1560 where the total contract price exceeds an amount established by the TTCECA; or

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

(2) Price Adjustment. Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to TTCECA, including profit or fee, shall be adjusted to exclude any significant sums by which TTCECA 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 TTCECA and the contractor.

(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 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; contract forms;

(1) Types of Contracts. Subject to the limitations of this section, any type of contract which will promote the best interests of TTCECA may be used, except that the use of a cost-plus-a-percentage-of-cost contract shall be approved by the board. 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 TTCECA than any other type or that it is impracticable to obtain the supplies, services or construction required except under such a contract.

(2) Contract Forms. The TTCECA shall prescribe the form of the contracts to be used in connection with TTCECA purchasing and construction.

SECTION 2015. Effect of a contract amendment.

A contract or amendment thereto, including, but not limited to, a change order or contract modification, is not effective against the TTCECA unless the contract or amendment is in writing and signed by an officer having actual authority to bind the TTECA.

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 in a manner prescribed in Appendix A; ~~provided, that the.~~ 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 ~~therefore for them.~~

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

- (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 TTCECA by encouraging effective competition or otherwise promoting economies.

(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 seven years. Contracts exceeding seven years must be approved by the Authority. For competitive procurements, approval of the maximum potential duration must be granted before solicitation.

SECTION 2050. Void contract terms or conditions.

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

SECTION 2060. Material changes prohibited.

A change order or a contract modification may not alter a contract in a manner or degree inconsistent with the underlying purposes and policies of this policy of Appendix A.

**SUBARTICLE 11.
AUDIT OF RECORDS**

SECTION 2210. Right to inspect plant.

The chief officer or his designee is authorized, at reasonable times, to inspect the part of the plant or place of business of a contractor or subcontractor which is related to the performance of a contract awarded or to be awarded by the TTCECA.

SECTION 2220. Right to audit records.

(1) Audit of Cost or Pricing Data. All TTCECA contracts shall contain a clause setting forth the 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 officer; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the chief officer.

(2) Contract Audit. TTCECA 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 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 1520(11) (Competitive Sealed Bidding: Request for Qualifications), 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 1530(1) (Competitive Sealed Proposals, Conditions for Use), Section 1530(4) (Competitive Sealed Proposals: Request for Qualifications), Section 1530(8) (Competitive Sealed Proposals: Negotiations), Section 1530(9) (Competitive Sealed Proposals, Selection and Ranking of Prospective Offerors), Section 1530(10) (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 Non-responsibility), Section 1830(3) (Cost or Pricing Data, Cost or Pricing Data Not Required), Section 2010 (Types and Forms of Contracts), Section 2030(2) (Multi-Term Contracts,

Determination Prior to Use), Section 3220(5) (Procurement Procedure, Selection and Ranking of the Three Most Qualified), and Section 4210(7) (Stay of Procurement During Protests, Decision to Proceed) shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. The procurement officer or TTCECA's designees 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.

(A) When any information or allegations concerning anticompetitive practices among any bidders or offerors, come to the attention of the TTCECA, immediate notice of the relevant facts shall be transmitted to the Attorney General.

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

SECTION 2430. Retention of procurement records.

All procurement records shall be retained and disposed of in accordance with TTCECA policy and procedures. All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt therefore.

SECTION 2440. Records of procurement actions.

(1) Contents of Records. TTCECA shall maintain a record listing contracts to include but not limited to Section 1560 (Sole Source Procurement) or Section 1570 (Emergency Procurements). The procurement officer shall maintain these records for four years and the record shall contain:

- (a) each contractor's name;
- (b) the amount type of each contract;
- (2)a listing of supplies, services, or construction procured under each contract.

(3)Publication of Records. A copy of the record regarding sole source and emergency procurements shall be submitted to the Materials Management Office 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 2710. Issuance of specifications; duties of the TTCECA.

The TTCECA may prescribe procedures governing the preparation, maintenance, and content of specifications for supplies, services, and construction required by TTCECA.

SECTION 2730. Assuring competition.

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

SECTION 2750. Specifications prepared by architects and engineers.

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

ARTICLE 9.

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

SUBARTICLE 1. DEFINITIONS

SECTION 2910. Definitions of terms used in this article.

~~As used in this article, unless the context clearly indicates otherwise:~~

(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 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 TTCECA 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 TTCECA project in a manner that contributes to the control of time, cost, and quality of construction as specified in the construction management contract.~~

(2) "Construction manager agent" means a business that has been awarded a separate contract with TTCECA to provide construction management services but not construction.

(3) "Construction manager at-risk" means a business that has been awarded a separate contract with the TTCECA to provide both construction management services and construction using the construction

management at risk project delivery method. A contract with a construction manager at risk may be executed before completion of design.

(4) "Construction management services" are those professional services associated with contract administration, project management, and other specified services provided in connection with the administration of a project delivery method defined in Section 3005 (Project Delivery Methods Authorized).

(5) "Construction management at-risk" means a project delivery method in which TTCECA awards separate contracts, one for architectural and engineering services to design an infrastructure facility and the second to a construction manager at-risk for both construction of the infrastructure facility according to the design and construction management services.

(6) "Design-bid-build" means a project delivery method in which TTCECA sequentially awards separate contracts, the first for architectural and engineering services to design an infrastructure facility and the second for construction of the infrastructure facility according to the design.

(7) "Design-build" means a project delivery method in which TTCECA enters into a single contract for design and construction of an infrastructure facility.

(8) "Design-build-finance-operate-maintain" means a project delivery method in which TTCECA enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. Money appropriated by the State is not used to pay for a part of the services provided by the contractor during the contract period.

(9) "Design-build-operate-maintain" means a project delivery method in which TTCECA enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period. All or a portion of the money required to pay for the services provided by the contractor during the contract period are either appropriated by the State before the award of the contract or secured by the State through fare, toll, or user charges.

(10) "Design requirements" means the written description of the infrastructure facility to be procured pursuant to this article, including:

(a) required features, functions, characteristics, qualities, and properties that are required by the State;

(b) the anticipated schedule, including start, duration, and completion; and

(c) estimated budgets as applicable to the specific procurement, for design, construction, operation, and maintenance. The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project.

(11) "Independent peer reviewer services" are additional architectural and engineering services that a TTCECA shall acquire, as designated in the Manual for Planning and Execution of State Permanent Improvement, in design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurements. The function of the independent peer reviewer is to confirm that the key elements of the professional engineering and architectural design provided by the contractor are in conformance with the applicable standard of care. If a TTCECA elects not to contract with the independent peer reviewer proposed by the successful offeror, the independent peer reviewer must be selected through competitive sealed proposals.

(12) "Infrastructure facility" means a building; structure; or networks of buildings, structures, pipes, controls, and equipment, or portion thereof, that provide transportation, utilities, public education, or public safety services. Included are government office buildings; public schools; courthouses; jails; prisons; water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air, and water port structures, terminals, and equipment.

(13) "Operations and maintenance" means a project delivery method in which TTCECA enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.

(14) "Proposal development documents" means drawings and other design-related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

SUBARTICLE 3.

CONSTRUCTION SERVICES

SECTION 3005. Project delivery methods authorized.

(1) The following project delivery methods are authorized for procurements relating to infrastructure facilities:

- (a) design-bid-build;
- (b) construction management at-risk;
- (c) operations and maintenance;
- (d) design-build;
- (e) design-build-operate-maintain; and
- (f) design-build-finance-operate-maintain.

(2) In addition to those methods identified in item (1), the board may:

- (a) approve as an alternate project delivery method any combination of design, construction, finance, and services for operations and maintenance of an infrastructure facility; and
- (b) allow or require any of the additional procedures established by Section 11-35-3024.

(3) Participation in a report or study that is later used in the preparation of design requirements for a project does not disqualify a firm from participating as a member of a proposing team in a construction management at-risk, design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurement unless the participation provides the business with a substantial competitive advantage.

SECTION 3010. ~~Method of construction contracting administration.~~ Choice of project delivery method.

~~The method of construction contracting administration used for a construction project by the TTCECA shall be determined to be that method which is most advantageous to TTCECA and will result in the most timely, economical, and successful completion of the construction project. The TTCECA shall determine in writing 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.~~

(1) Selection of Method. The project delivery method used for a state construction project must be that method which is most advantageous to the TTCECA and results in the most timely, economical, and successful completion of the construction project. The TTCECA shall select the appropriate project delivery method for a particular project and shall state in writing the facts and considerations leading to the selection of that particular method.

SECTION 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 3005 (Project delivery methods authorized), except as provided in Sections 1550 (Small Purchases), 1560 (Sole Source Procurement), 1570 (Emergency Procurements), 3230 (Exception for small architect-engineer, and land surveying services contract), 3310 (Indefinite quantity contracts for architectural-engineering, and land surveying services), and 3320 (task

order contracts).

(2) Design-bid-build:

(a) Design. Architect-engineer, construction management, and land surveying services. The qualifications based selection process in Section 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 3015 (3), (5), (6), (7), and (8).

(b) Construction. Competitive sealed bidding, as provided in Section 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 1520 (Competitive Sealed Bidding) or Section 1530 (Competitive Sealed Proposals).

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

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

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

(7) Design-build-finance-operate-maintain. Contracts for design-build-finance-operate-maintain must be procured by competitive sealed proposals, as provided in Section 1530 (Competitive Sealed Proposals) or Section 1535 (Competitive Negotiations). TTCECA will obtain approval of the State Fiscal Accountability Authority before using any project delivery method that includes private sector financing.

(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 1510, as specified by the authority approving the alternative project delivery method.

SECTION 3020. Construction procurement procedures. Additional bidding procedures for construction procurement.

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

(2) The competitive processes required by subsection (1) of this section shall be subject to the following exceptions:

(a) Bid Acceptance. TTCECA solicitation shall set forth all requirements of the solicitation including, but not limited to:

(i) TTCECA, in consultation with the architect-engineer assigned to the project, shall identify all major subcontractors, who are expected to perform work for the prime contractor to or about the construction. In addition, TTCECA in consultation with the architect-engineer assigned to the project may identify by specialty 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 solicitation is not protestable under any other provision of this Procurement Policy. Any bidder in response to a solicitation for bids shall set forth in his bid the name of only those subcontractors that will perform the work as identified in the solicitation 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 solicitation, the bidder shall list himself in the appropriate place in his bid and not subcontract any of that work except with the approval of TTCECA for good

cause shown.

(ii) Failure to complete the list provided in the solicitation 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 TTCECA by the contractor that a subcontractor who was listed is not financially responsible;

(b) upon a showing satisfactory to TTCECA 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 TTCECA 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 TTCECA 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 TTCECA 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 TTCECA to be substantially unsatisfactory;

(h) upon mutual agreement of the contractor and subcontractor;

(i) with the consent of TTCECA for good cause shown.

The request for substitution must be made to TTCECA 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 Procurement Policy.

(b) A determination of responsibility must be made before award in accordance with Section 1810.

(c) When bids received pursuant to an invitation for bids conducted pursuant to Section 1520 exceeds available funds and it is determined in writing by TTCECA that circumstances will not permit the delay required to re-solicit 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. TTCECA 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 the written approval of the chief officer based on the best interest of TTCECA.

(2) When the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the TTCECA is able to identify additional funds for the project, as certified by the appropriate fiscal officers, in the amount of the difference between the lowest base bid and the approved available funds for the project, the TTCECA shall submit its request to use the additional funds to the State Fiscal Accountability Authority and Joint Bond Review Committee in accordance with the provisions of Sections 2-47-40 and 2-47-50 of the South Carolina Code of Laws. The provisions of this paragraph apply only to those TTCECA projects that, pursuant to this code or Section 59-53-480, are subject to the provisions of Chapter 47, Title 2 of the South Carolina Code of Laws.

Exceptions in Competitive Sealed Bidding Procedures. The process of competitive sealed bidding as

required by Section 3015(2)(b) must be performed in accordance with the procedures outlined in Section 1520 subject to the following exceptions:

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

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

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

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

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

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

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

(ii) After seven business days' notice is given, TTCECA may enter into a contract with the bidder named in the notice in accordance with the provisions of this code and the bid solicited. The procurement officer must comply with Section 1810.

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

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

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

(ii) If the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and TTCECA is able to identify additional funds for the project, as certified by the appropriate fiscal officers, in the amount of the difference between the lowest base bid and the approved available funds for the project, TTCECA may authorize use of those additional funds.

SECTION 3021. Subcontractor substitution.

(1) After notice of an award or intended award has been given, whichever is earlier, the prospective contractor identified in the notice may not substitute a business as subcontractor in place of a subcontractor listed in the prospective contractor's bid or proposal, except for one or more of the following reasons:

(a) upon a showing satisfactory to TTCECA by the prospective contractor that:

(i) the listed subcontractor is not financially responsible;

(ii) the listed subcontractor's scope of work did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the subcontractor's original bid;

(iii) the listed subcontractor was listed as a result of an inadvertent clerical error, but only if that request is made within four working days of opening;

(iv) the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prospective contractor after the subcontractor had represented to the prospective contractor that the subcontractor could obtain a performance and payment bond; and

(v) the listed subcontractor must be licensed and did not have the license at the time required by law;

(b) if the listed subcontractor fails or refuses to perform his subcontract;

(c) if the work of the listed subcontractor is found by TTCECA to be substantially unsatisfactory;

(d) upon mutual agreement of the contractor and subcontractor; and

(e) with the consent of TTCECA for good cause shown.

(2) The request for substitution must be made to TTCECA in writing. This written request does not give rise to a private right of action against the prospective contractor in the absence of actual malice.

(3) If substitution is allowed, the prospective contractor, before obtaining prices from another subcontractor, must attempt in good faith to negotiate a subcontract with at least one subcontractor whose bid was received before the submission of the prospective contractor's offer. This section does not affect a contractor's ability to request withdrawal of a bid in accordance with the provisions of this code and the

regulations promulgated pursuant to it.

(4) This section applies to a procurement conducted using the source selection methods authorized by Section 3015(2)(b), (3), (5), (6), (7), and (8).

SECTION 3023. Prequalification on TTCECA construction.

In accordance with this section the board may limit participation in a solicitation for construction to only those businesses, including potential subcontractors, that are prequalified. If fewer than two businesses are prequalified, the prequalification process must be canceled.

SECTION 3024. Additional procedures applicable to procurement of certain project delivery methods.

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

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

(a) must include design requirements;

(b) must solicit proposal development documents; and

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

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

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

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

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

(3) Evaluation Factors. A Request for Proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain must:

(a) state the relative importance of (i) demonstrated compliance with the design requirements, (ii) offeror qualifications, (iii) financial capacity, (iv) project schedule, (v) price, or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements, and (vi) other factors, if any; and

(b) in circumstances required by the board, require each offeror to identify an Independent Peer Reviewer whose competence and qualifications to provide that service must be an additional evaluation factor in the award of the contract.

SECTION 3025. Approval of architectural, engineering or construction changes

TTCECA 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 TTCECA. The provisions of this section do not relieve TTCECA of any other applicable statutory requirements including, but not limited to Title 29, Chapter 6 of the South Carolina Code of Laws.

SECTION 3060. Fiscal responsibility.

Subject to Section 40(6), every contract modification, change order, or contract price adjustment under a construction contract with TTCECA shall be subject to the provisions of Sections 2-47-40 and 2-47-50 except as otherwise provided in Section 59-53-480.

SECTION 3070. Approval of architectural, engineering, or construction changes which do not alter general scope or intent or exceed approved budget.

The Procurement Officer may approve and pay for amendments to architectural/engineering contracts and change orders to construction contracts, within the TTCECA's authority, which do not alter the general scope or intent of the project and which do not exceed the previously approved project budget.

SUBARTICLE 5.

ARCHITECT-ENGINEER, CONSTRUCTION MANAGEMENT, AND LAND SURVEYING SERVICES

SECTION 3210. ~~Applicability and policy.~~ Policy.

Policy. It is the policy of TTCECA to announce publicly all requirements for architect-engineer, construction management, and land surveying services and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the particular type of services required and at fair and reasonable prices. ~~This policy does not prohibit the acquisition of such services pursuant to Article 5 when such services are acquired in conjunction with construction.~~

SECTION 11 35 3215. Preference for resident design service; definitions; exceptions.

(A) As used in this section:

(1) "Design services" means architect engineer, construction management, or land surveying services as defined in Section 2910 and awarded pursuant to Section 3220.

(2) "Resident" means a business that employs, either directly or through consultants, an adequate number of persons domiciled in South Carolina to perform a majority of the design services involved in the procurement.

(B) A business responding to an invitation involving design services shall submit a certification with its response stating whether the business is a resident for purposes of the procurement. Submission of a certification under false pretenses is grounds for suspension or debarment.

(C) An award to a nonresident of a contract involving design services must be supported by a written determination explaining why the award was made to the selected firm.

(D) In an evaluation conducted pursuant to Section 3220, a resident firm must be ranked higher than a nonresident firm if the agency selection committee finds the two firms otherwise equally qualified.

(E) This section does not apply to a procurement if either the procurement does not involve construction or the design services are a minor accompaniment to a contract for nondesign services.

SECTION 3220. Procurement procedures.

(1) Selection Committee. TTCECA shall establish its own architect-engineer, construction management, and land surveying services selection committee referred to as the selection committee, which ~~shall~~must be composed of those individuals ~~whom~~ the TTCECA agency head determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The TTCECA agency head shall serve on all selection committees. The agency head or qualified responsible designee shall sit as a permanent member of the agency selection committee for the purpose of coordinating and accounting for the committee's work.

(2)(a) Advertisement of Project Description. The selection committee shall be responsible for:

- (a)(i) developing a description of the proposed project,
- (b)(ii) enumerating all required professional services for that project, and
- (c)(iii) preparing a formal invitation to firms for submission of information.

(b) The invitation ~~shall~~must include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, the submission deadline, and how interested firms may apply for consideration. The invitation ~~shall~~must be advertised 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~~respond to the committee's advertisement and who are ~~deemed~~considered most qualified on the basis of information available ~~prior~~before to the interviews. If less than three persons or firms ~~have responded~~respond to the advertisement, the committee shall hold interviews with those that did respond. The selection committee's determination as to which ~~will be~~are to be interviewed ~~shall~~must be in writing and ~~shall be~~ based upon its review and evaluation of all submitted materials. The written report of the committee ~~shall~~must list 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~~is to provide such further information as may be required by the TTCECA selection committee to fully acquaint itself with the relative qualifications of the several interested firms.

(5) Selection and Ranking of the Three Most Qualified.

(a) The selection committee shall evaluate each of the persons or firms interviewed in view of their:

- (a)(i) past performance;
- (b)(ii) the ability of professional personnel;
- (c)(iii) demonstrated ability to meet time and budget requirements;
- (d)(iv) location and knowledge of the locality of the project if the application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project;
- (e)(v) recent, current, and projected workloads of the firms;
- (f)(vi) creativity and insight related to the project; and
- (g)(vii) related experience on similar projects;
- (viii) volume of work awarded by the using agency to the person or firm during the previous five years, with the objective of effectuating an equitable distribution of contracts among qualified firms including Minority Business Enterprises certified by the South Carolina Office of Small and Minority Business Assistance and firms that have not had previous TTCECA work; and

(ix) any other ~~criteria identified in the invitation~~ special qualification required pursuant to the solicitation.

(b) 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 TTCECA that the ranking report is final, written notification of the highest ranked person or firm must be sent immediately to all firms interviewed

(7) Negotiation of Contract. The ~~TTCECA Head or designee procurement officer~~ shall negotiate a contract for services with the most qualified person or firm at a compensation which is fair and reasonable to the TTCECA. ~~Should the procurement officer be~~ If TTCECA is unable to negotiate a satisfactory contract with this person or firm, negotiations ~~shall~~ must be ~~terminated~~ formally terminated. Negotiations ~~shall~~ must commence in the same manner with the second and then the third most qualified until a satisfactory contract has been negotiated. If ~~no~~ an agreement is ~~not~~ reached with one of the three, additional persons or firms in order of their competence and qualifications ~~shall~~ must be selected after consultation with the selection committee, and negotiations shall be continued in the same manner until agreement is reached.

(8) Documentation. The TTCECA Head or designee shall prepare the following documents:

(a) the written report of the selection committee, listing the persons or firms that responded to the invitation to submit information and enumerating the reasons of the committee for selecting the particular ones to be interviewed;

(b) the written ranking report of the selection committee and all data substantiating the determinations made in that report; and

(c) the tentative contract between TTCECA and the selected person or firm.

(9) Award. Once a contract has been successfully negotiated in accordance with this section, notification of award of a contract 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. When ~~TTCECA is~~ securing architect-engineer or land surveying service which ~~is~~ are estimated not to exceed fifty thousand dollars, TTCECA may ~~employ the architects, engineers, or land surveyors~~ 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 Value of Small Contracts with~~ One Person or Firm. ~~Fees paid during the twenty-four month period immediately preceding negotiation of the contract by any TTCECA for professional services performed by any one architectural engineering or land surveying firm pursuant to Section 3230~~ The total value of contracts awarded to a single architectural engineering, construction management, or land surveying firm pursuant to subsection (1) ~~shall~~ may not exceed one hundred fifty thousand dollars ~~in a twenty-four-month period. All persons~~ Persons or firms seeking to render professional services pursuant to this section shall furnish TTCECA a list of professional services, including fees paid therefore, performed for the TTCECA 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.

(4) Splitting of Larger Projects Prohibited. TTCECA ~~shall~~ may not break a project into small projects for

the purpose of circumventing the provisions of Section 3220 and this section.

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

SECTION 3245. Architect, engineer, or construction manager; performance of other work.

(a) An architect or engineer performing design work, or a construction manager performing construction management services, both as described in Section 2910(1) and (3), under a contract awarded pursuant to the provisions of Section 3220 or Section 3230, may not perform other work, by later amendment or separate contract award, on that project as a contractor or subcontractor either directly or through a business in which he or his architectural engineering or construction management firm has greater than a five percent interest.

(b) For purposes of this section, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a contractor or subcontractor. If the construction manager performs or is responsible for safety compliance and other incidental construction support activities, and these support activities are in noncompliance with the provisions of state and federal regulations, then the construction management firm is subject to all applicable fines and penalties.

(c) This section applies only to procurements for construction using the design-bid-build project delivery method.

ARTICLE 10

INDEFINITE QUANTITY CONTRACTS

SECTION 3305. Establishment of indefinite quantity contracts.

The TTCECA Procurement Officer may establish contracts providing for an indefinite quantity, within appropriate maximum or minimum limits, of specified supplies, service, or information technology, to be furnished during a fixed period, and that provide for the issuance of orders for delivery or performance of individual requirements during the period of the contract.

SECTION 3310. Indefinite quantity contracts for architectural-engineering and land-surveying services.

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

(2) Architectural-Engineering and Land-Surveying Services. When architectural-engineering and land-surveying services contracts are awarded, each contract must be limited to a total expenditure of five hundred thousand dollars for a two year period with individual expenditures not to exceed two hundred thousand dollars.

(3) Small Indefinite Quantity Contracts. Small indefinite quantity contracts for architectural-engineering and land-surveying services may be procured as provided in Section 3230. A contract established under this section must be subject to Section 3230.

SECTION 3320. Task order contracts.

(A) The term "task order contract" means a contract that does not procure or specify a firm quantity of services, other than a minimum or maximum quantity, and that provides for the issuance of task orders for the performance of tasks during the period of the contract. Subject to the requirements of this section and other applicable law, The TTCECA may enter into task order contracts to acquire construction services when the exact time or exact quantities of future tasks are not known at the time of contract award.

(B) At any given time, the TTCECA may enter into task order contracts with four businesses for each geographic area for each licensing classification and subclassification for construction. Licensing classification and subclassification has the meaning provided by SC Code of Laws Chapter 11, Title 40. Except as otherwise provided in

this section, a task order contract for construction must be procured as provided in Section 1530, not including paragraph (4) (Request for Qualifications) or paragraph (8) (Negotiations). All evaluations must be conducted by a panel composed of at least three members. Award must be made to the four responsible offerors whose proposals are determined in writing to be the most advantageous to the TTCECA, taking into consideration the evaluation factors set forth in the request for proposals. The contract file must contain the basis on which the awards will be made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contracts must be the same as those provided in Section 1520(1) (Award). Section 3023 does not apply to contracts awarded pursuant to this section.

(C) Limitations on task order contracts.

- (1) A task order contract awarded for geographic area may not be used to perform services at a different geographic area.
- (2) A task order contract may not exceed five years, including extensions.
- (3) Total expenditures pursuant to all task order contracts for construction resulting from a single solicitation may not exceed four million dollars.
- (4) The total construction cost of a single project performed using multiple task orders or task orders in combination with other types of contracts may not exceed five hundred thousand dollars. Projects may not be divided artificially to avoid this limitation.
- (5) A single project must not be performed using task order contracts for construction in combination with contracts awarded pursuant to Section 1550.

(D) Limitations on task orders.

- (1) A task order must clearly specify all tasks to be performed or property to be delivered under the order so the full price for the performance of the work can be established when the order is placed. All task orders must be issued on a fixed-price basis.
- (2) A quote request for construction must be provided to all task order contractors. A task order for construction may not be issued unless TTCECA receives at least two responsive, bona fide, fixed-price quotes. Any award must be issued to the contractor submitting the lowest responsive quote.
- (3) All task orders must be issued within the period of the contract and must be within the scope and maximum value of the contract.
- (4) A task order for construction may not be less than ninety thousand dollars and may not exceed three hundred fifty thousand dollars. Work may not be aggregated or divided artificially in order to avoid these limits.

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

- (1) the period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any;
- (2) the maximum dollar value of the services to be procured under the contract;
- (3) the minimum and maximum dollar value of the services to be procured under a single task order;
- (4) a description that reasonably describes the licensing classification and the general scope, nature, complexity, and purposes of the services to be procured under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;
- (5) the procedures that TTCECA will use for requesting fixed price quotes and for issuing orders, a restriction on communications between contractors regarding pending quote requests, and a requirement that all contractors must respond to all quote requests;
- (6) the geographic area to which the task order contract applies. Ordinarily, a geographically contiguous area should not be subdivided; and
- (7) the number of task order contracts to be awarded.

(F) Every award of a task order contract must be approved by the TTCECA Agency Head.

(G) Administrative review under Article 17 is not available for the award of an individual task order, except for a

protest of the award of a task order on the ground that the order increases the scope, period, or maximum value of the task order contract under which the order is issued.

ARTICLE 15

SUBARTICLE 3.

REGULATIONS FOR SALE, LEASE, TRANSFER, AND DISPOSAL OF SURPLUS PROPERTY

SECTION 3810. Procedures for ~~sale, lease, transfer and~~ disposal.

Disposal of surplus property. TTCECA is exempt from all laws governing the disposal of surplus property, as indicated in South Carolina Code of Laws Section 59-53-480 (A).

SECTION 3820. Allocation of proceeds for sale or disposal of surplus supplies.

The sale of all TTCECA owned supplies, property, or personal property not in actual TTCECA use shall be conducted and directed by the TTCECA. Such sales shall be held at such places and in such manner as in the judgment of the TTCECA shall be most advantageous to the TTCECA. Unless otherwise determined by TTCECA, sales shall be ~~by~~ either by public auction or competitive sealed bid to the highest bidder.

SECTION 3830. Trade-in sales.

TTCECA may trade-in personal property, the trade-in value of which may be applied to the procurement or lease of like items.

ARTICLE 17.

LEGAL AND CONTRACTUAL REMEDIES

SUBARTICLE 1.

ADMINISTRATIVE RESOLUTION OF CONTROVERSIES

SECTION 4200. In every procurement under this Procurement Policy, TTCECA shall include a statement in the solicitation documents relating to the procurement, the following statement: "By participating in this procurement, the bidder, offeror, contractor, or subcontractor agrees that the rights and remedies contained in the Trident Technical College Enterprise Campus Authority Procurement Policy are to the exclusion of all other rights and remedies for the bidder, offeror, contractor, or subcontractor against Trident Technical College Enterprise Campus Authority at common law or otherwise for the loss or potential loss of an award of a contract under the Trident Technical College Enterprise Campus Authority Procurement Policy." The statement shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the solicitation document.

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.

(a) Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the chief 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. An Invitation for Bids or Requests for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this policy.

(b) 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 officer in the manner stated in subsection

(2) below within ~~fifteen~~ seven (7) business days of the date notification of award is posted in accordance with this ~~policy~~. Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with the intended award or award of a contract and has notified the chief officer of its intent to protest, may protest to the chief officer in the manner stated in subsection (2) within fifteen (15) days of the date award or intended award is posted and sent in accordance with this policy, except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(c) 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 against the TTCECA at common law or otherwise for the loss or potential loss of an award of a contract under the TTCECA Procurement Policy.

~~(e)(d)~~ (d) The rights and remedies granted by subsection (1) and Section 4410(b) are not available for contracts with an actual or potential value of up to \$100,000.00.

(2) Protest Procedure. A protest under subsection (1) shall be in writing, submitted to the chief 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. The protest must be received by the chief officer within the time provided in subsection (1).

(3) Duty and Authority to Attempt to Settle Protests. Prior to commencement of an administrative review

as provided in subsection (4), the chief officer, TTCECA agency head, or designees thereof ~~shall~~may attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The chief officer, TTCECA agency head, or designees thereof shall have the authority to approve any settlement reached by mutual agreement.

(4) Administrative Review and Decision. If in the opinion of the chief officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the chief 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 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 4410(1) within ten days of posting of the decision in accordance with Section 4210(5). The request for review shall be directed to the chief officer, who shall forward the request to the Procurement Review Panel and shall be in writing, setting forth the reasons ~~why the person disagrees for disagreement~~ with the decision of the chief 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) TTCECA shall not proceed further with the solicitation or award of the contract until ~~ten (10) days after~~ a decision is ~~rendered posted~~ by the chief 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 officer, or TTCECA agency head, makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interests of the TTCECA.

~~(7)(8) (8)~~ Notice of Chief Officer Address. Notice of the address of the chief officer must be included in every notice of an intended award and in every invitation for bids, request for proposals, or other type solicitation

SECTION 4215. Posting bond or irrevocable letter of credit.

The TTCECA may request that the chief officer require any bidder or offeror who files an action protesting the intended award or award of a contract solicited under Article 5 of the policy and valued at one million dollars or more to post with the chief officer a bond or irrevocable letter of credit payable to the TTCECA in an amount equal to one percent of the total potential value of the contract as determined by the chief officer. The chief officer's decision to require a bond or irrevocable letter of credit is not appealable under Article 17. The bond or irrevocable letter of credit shall be conditioned upon the payment of all reasonable reimbursement costs which may be adjudged against the bidder or offeror filing the protest in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. For protests of sole source or emergency procurements, the bond or irrevocable letter of credit shall be in an amount equal to one percent of the requesting agency's estimate of the contract amount for the sole source or emergency procurement requested. In lieu of a bond or irrevocable letter of credit, the chief officer may accept a cashier's check or money order in the amount of the bond or irrevocable letter of credit. If, after completion of the administrative hearing process and any appellate court proceeding, the agency prevails, it may request that the Procurement Review Panel allow it to recover all reasonable reimbursement costs and charges associated with the protest which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the bidder or offeror protesting the intended award or award of a contract, the bond, irrevocable letter of credit, cashier's check, or money order shall be

returned to the bidder or offeror. Failure to pay such costs and charges by the bidder or offeror protesting the intended award or award of a contract shall result in the forfeiture of the bond, irrevocable letter of credit, cashier's check, or money order to the extent necessary to cover the payment of all reasonable reimbursement costs adjudged against the protesting bidder or offeror. If the bidder or offeror prevails in the protest, the cost of providing the bond, irrevocable letter of credit or cashier's check may be sought from the TTCECA, provided that in no event may the amount recovered exceed fifteen thousand dollars.

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 conducted under this Procurement Policy that such an order has on procurements conducted pursuant to Title 11, Chapter 35 of the South Carolina Code of Laws.

SECTION 4230. Authority to resolve contract and breach of contract controversies.

(1) Applicability. This section applies to controversies between the TTCECA and a contractor or subcontractor when the subcontractor is the real party in interest, which arises under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. The procedure set forth in this section shall constitute the exclusive means of resolving a controversy between the TTCECA and a contractor or subcontractor concerning a contract solicited and awarded under the provisions of the TTCECA Procurement Policy.

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

(3) Duty and Authority to Attempt to Settle Contract Controversies. Prior to commencement of an administrative review as provided in subsection (4), the chief officer or his designee must attempt to settle by mutual agreement a contract controversy brought under this section. The chief 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 officer, after reasonable attempt, a contract controversy cannot be settled by mutual agreement, the chief officer must 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 and a statement of appeal rights under Section 4230(6) shall be mailed or otherwise furnished immediately to all parties participating in the administrative review proceedings. The chief officer must also post a copy of the decision at a time and place communicated to all parties participating in the administrative review, and such posted decision must indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section 4230 (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 requests a further administrative review by the Procurement Review Panel under Section 4410 (1) within ten days of the posting of the decision in accordance with Section 4230 (5). The request for review must be directed to the chief officer who shall

forward the request to the Procurement Review Panel and must be in writing setting forth the reasons why the person disagrees with the decision of the chief officer. The person may also request a hearing before the Procurement Review Panel.

(7) Regarding any controversy arising out of a contract between the TTCECA and a contractor, as a condition of receiving the award of a contract, TTCECA may require any bidder or offeror to agree to voluntary or mandatory alternative dispute resolution, including but not limited to, mediation and arbitration.

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 officer or the Procurement Review Panel, upon administrative review, that a solicitation or award of a contract is in violation of this Procurement Policy or other applicable provisions of law. The remedies set forth herein may be granted by either the chief officer after review under Section 4210 or by the Procurement Review Panel after review under Section 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 this Procurement Policy or other applicable provision of law, then the solicitation or proposed award may be:

- (a) canceled;
- (b) revised to comply with this Procurement Policy or other applicable provision of law and re-bid; or
- (c) awarded in a manner that complies with the provisions of this Procurement Policy.

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

- (a) the contract may be ratified and affirmed, provided it is in the best interests of the TTCECA; 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 4320. Contract controversies.

Remedies available in a contract controversy brought under the provisions of Section 4230 are as follows: The chief officer or the Procurement Review Panel, in the case of review under Section 4410(1), may award such relief as is necessary to resolve the controversy as allowed by the terms of the contract or by applicable law.

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 its 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.

Section 4340. Rights and remedies

There is no remedy against the TTCECA other than those provided in this chapter and in any case involving a procurement subject to this policy. The rights and remedies granted in this policy are to the exclusion of all other rights and remedies against the TTCECA for matters arising out of or related to this policy.

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 Procurement Policy to the same extent it applies to procurements pursuant to Title 11, Chapter 35 of the South Carolina Code of Law.

Finality. ~~The~~ Notwithstanding another provision of law, including the Administrative Procedures Act, the decision of the Procurement Review Panel is final as to administrative review and its decision may be appealed only to the circuit court of appeals pursuant to Section 1-23-380, and the filing of an appeal does not stay a decision of the panel, under the provisions of the South Carolina Administrative Procedures Act.

ARTICLE 19. INTERGOVERNMENTAL RELATIONS SUBARTICLE 1. APPLICATION

SECTION 4610. Application

For purposes of cooperative purchasing, TTCECA is governed by Article 19, Title 11, Chapter 35 of the South Carolina Code of Laws.

ARTICLE 21. ASSISTANCE TO MINORITY BUSINESSES

SECTION 5010. Definitions of terms used in this article.

The TTCECA may develop procedures establishing detailed definitions of the following terms using, in addition to the criteria set forth in this section, such other criteria as it may deem desirable.

As used in the article, unless the context clearly indicates otherwise:

(1) "Minority person" means a United States citizen who is economically and socially disadvantaged.

(a) "Socially disadvantaged individuals" means those individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group, without regard to their individual qualities. Such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian Pacific Americans, and other minorities to be designated by TTCECA.

(b) "Economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

(2) A "socially and economically disadvantaged small business" means any small business concern which:

(a) is at least fifty-one percent owned by one or more citizens of the United States who are determined to be socially and economically disadvantaged.

(b) in the case of a concern which is a corporation, fifty-one percent of all classes of voting stock of such corporation must be owned by an individual determined to be socially and economically disadvantaged.

(c) in the case of a concern which is a partnership, fifty-one percent of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged and whose management and daily business operations are controlled by individuals determined to be socially and economically disadvantaged. Such individuals must be involved in the daily management and operations of the business concerned.

SUBARTICLE 3.

ASSISTANCE TO MINORITY BUSINESSES

SECTION 5210. Statement of policy and its implementation.

(1) Statement of Policy. TTCECA recognizes 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. TTCECA believes that it is in the best interest of TTCECA to assist minority-owned businesses to develop fully as a part of the policies and programs that are designed to promote balanced economic and community growth throughout the State. TTCECA, therefore, wishes to ensure that those businesses owned and operated by minorities are afforded the opportunity to fully participate in the overall procurement process of TTCECA. TTCECA, therefore, takes 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, overall state economic development and reduce dependency on the part of minorities.

(2) Implementation. TTCECA shall implement the policy set forth in subsection (1) of this section.

SECTION 5220. Duties of the chief officer.

(1) Assistance from the Chief Officer. The chief officer shall provide appropriate staff to assist minority businesses with the procurement procedures contained in this Procurement Policy.

(3) Source Lists. The procurement officer must maintain special source lists of minority business firms detailing the products and services they provide.

SECTION 5240. Minority business enterprise (MBE) utilization plan.

(1) In order to emphasize the use of minority small businesses, the TTCECA must develop a Minority Business Enterprise (MBE) Utilization Plan. The MBE Utilization Plan must include, but not be limited to:

(b) A policy statement expressing a commitment by the TTCECA to use MBE's in all aspects of procurement;

(2) MBE utilization plans must be submitted to the Governor's Office of Small and Minority Business Assistance ("OSMBA") for approval not later than July thirtieth, annually. Progress reports shall be submitted to the OSMBA not later than ten days after the end of each fiscal quarter and must include the:

(a) Number of minority firms solicited;

(b) Number of minority bids received; and

(c) Dollar amount of minority bids awarded.

SECTION 5260. Annual report regarding contracts with certified small, minority, and women-owned businesses.

The TTCECA must report annually in writing to the board concerning the number and dollar value of contracts awarded to eligible minority businesses during the preceding fiscal year. These records shall be maintained to evaluate the progress of this program.

**TRIDENT TECHNICAL COLLEGE
ENTERPRISE CAMPUS AUTHORITY**

**PROCUREMENT POLICY
APPENDIX A**

Paragraph 2000	TTCECA Procurement Policy
Paragraph 2005	Approval of Internal Procurement Procedures Manual.
Paragraph 2015	Ratification.
Paragraph 2030	Competitive Sealed Bidding-The Invitation for Bids.
Paragraph 2042	Pre-Bid Conferences.
Paragraph 2045	Receipt and Safeguarding of Bids.
Paragraph 2050	Bid Opening.
Paragraph 2055	Bid Acceptance and Bid Evaluation.
Paragraph 2060	Telegraphic Bids.
Paragraph 2065	Rejection of Bids.
Paragraph 2070	Rejection of Individual Bids.
Paragraph 2075	All or None Qualifications.
Paragraph 2080	Clarifications with Bidders
Paragraph 2085	Correction or Withdrawal of Bids; Cancellation of Awards.
Paragraph 2090	Award.
Paragraph 2095	Competitive Sealed Proposals.
Paragraph 2097	Rejection of Proposals
Paragraph 2100	Small Purchases and Other Simplified Purchasing Procedures.
Paragraph 2105	Sole Source Procurements.
Paragraph 2110	Emergency Procurements.
Paragraph 2125	Responsibility of Bidders and Offerors.
Paragraph 2130	Prequalification of Supplies and Suppliers.
Paragraph 2135	Conditions for Use of Multi-term Contracts.
Paragraph 2140	Specifications.
Paragraph 2145	Construction, Architect-Engineer, Construction Management, and Land Surveying Services.
Paragraph 2152	Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.
Paragraph 2160	Assistance to Minority Businesses.

Paragraph 2000 TTCECA Procurement Policy

This Appendix A to the Trident Technical College Enterprise Campus Authority (TTCECA) Procurement Policy is authorized pursuant to Section 59-53-1784 of the South Carolina Code of Laws.

The provisions included in this Appendix A supplement the procedures and requirements contained in the main portion of the TTCECA Procurement Policy. If a provision in this Appendix A is inconsistent with a provision contained in the main body of the TTCECA Procurement Policy, then the provision in the main body controls. Nothing contained in this Appendix A shall be construed to waive any rights, remedies or defenses the TTCECA might have under any laws of the State of South Carolina.

Paragraph 2005 Approval of Internal Procurement Procedures Manual.

TTCECA may develop an internal procurement procedures manual consistent with the TTCECA Procurement Policy.

Paragraph 2010 Disclosure of Procurement Information

Prior to the issuance of an award or notification of an award, TTCECA personnel involved in an acquisition shall forward or refer all requests for information regarding the procurement to the responsible procurement officer. The procurement officer will respond to the request.

Prior to the issuance of an award or notification of an award, TTCECA personnel involved in an acquisition shall not engage in conduct that knowingly furnishes source selection information to anyone other than the responsible procurement officer, unless otherwise authorized in writing by the responsible procurement officer.

In procurements conducted pursuant to Section 1530, TTCECA personnel with access to proposal information shall not disclose either the number of offerors or their identity prior to the issuance of an award or notification of award, except as otherwise required by law.

Paragraph 2015 Ratification.

A. Procurement Policy. The ratification of an act obligating the TTCECA in a contract by any person without the requisite authority to do so by an appointment or delegation under this Procurement Policy rests with the TTCECA board which has the authority to ratify all such acts. It is prohibited for a Procurement Officer to ratify such acts.

B. Corrective Action and Liability. With regard to any ratification, the TTCECA Agency Head shall prepare a written determination as to the facts and circumstances surrounding the act, what corrective action is being taken to prevent reoccurrence, action taken against the individual committing the act, and documentation that the price paid is fair and reasonable.

Paragraph 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, TTCECA 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 to visibly mark as "confidential" each part of their bid which they consider to be exempt from public 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 Officer or the TTCECA agency head or his designee.

Paragraph 2042 Pre-Bid Conferences.

(A) Pre-bid conferences may be conducted. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Notice of the conference must be included in the notice of the solicitation required by Articles 5 or 9 of this code.

(B) Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment. A potential bidder's failure to attend an advertised pre-bid conference will not excuse its responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to TTCECA.

(C) Pre-bid conferences may not be made mandatory absent a written determination by the head of TTCECA or his designee that the unique nature of the procurement justifies a mandatory pre-bid conference and that a mandatory pre-bid conference will not unduly restrict competition

Paragraph 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. 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 TTCECA, 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 Procurement Officer, or a designee. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his/her 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.

C. When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or if unopened, otherwise disposed of. Unopened bids or proposals are not considered to be public information under Chapter 4 of Title 30 (Freedom of Information Act).

Paragraph 2050 Bid Opening.

A. Procedures.

The Procurement Officer or 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. Postponement of Bid Opening

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 TTCECA 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 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.

Paragraph 2055 Bid Acceptance and Bid Evaluation.

When necessary for the best interest of TTCECA, 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.

Paragraph 2065 Rejection of Bids.

A. Application. Unless there is a compelling reason to reject one or more bids, award will be made to the lowest responsible and responsive bidder. 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 State, such as cost of transporting the TTCECA 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) 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 TTCECA. Determinations to cancel invitations for bids shall state the reasons therefor.

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.

Paragraph 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. Nonresponsive Bids

Any bid that 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 that would modify requirements of the invitation for bids or limit the bidder's liability to the TTCECA 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/herself against future changes in conditions, such as increased costs, if total possible cost to the TTCECA 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/her bid by stipulating that his/her 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 TTCECA to determine that the bidder's product meets the TTCECA specifications; or

(6) limits the rights of the TTCECA under any contract clause. Bidders may be requested to delete objectionable conditions from their bid provided that these conditions do not go to the substance, as distinguished from the form, of the bid or work an injustice on other bidders. Bidder should be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.

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.

G. Unsigned Bids.

Unsigned bids shall be rejected unless a representative of the company who has the authority to sign is present at the bid opening and if discovery is made prior to the reading of any bids for that procurement, the representative may be allowed to sign the bid.

H. Exceptions to Rejection Procedures. Any bid received after the Procurement Officer or designee has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the location specified in the bid, or the TTCECA mail room which services that purchasing office prior to the bid opening.

Paragraph 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.

Section 2080 Clarifications with Bidders.

Apparent responsive bidder, as used in the source selection process, means a person who has submitted a bid or offer which obviously conforms in all material aspects to the solicitation. A procurement officer's decision regarding whether a bid is apparently responsive is final unless protested.

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

Paragraph 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 the bidder or offeror 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.

After an award or notification of intent to award, whichever is earlier has been issued but before performance has begun, the award or contract may be canceled and either re-awarded, or a new solicitation issued, or the existing solicitation canceled, if the chief 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 TTCECA, such as cost of transporting the TTCECA furnished property to bidders' plants;
- (5) Bids received indicate that the needs of the TTCECA 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 TTCECA discovered prior to performance, or
- (8) For other reasons, cancellation is clearly in the best interest of the TTCECA.

(D) Confirmation of Bid. When the procurement officer knows or has reason to conclude that a mistake may have been made, he/she should request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. The procurement officer should only disclose information that is publicly available when confirming a bid. If the bidder asserts a mistake, the bid may be corrected or withdrawn only if allowed by Section 2085 and 2095.

Paragraph 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 issue the notice of intent to award or award on the date specified in the solicitation 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 specified in the solicitation.

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 solicitation.

Paragraph 2095 Competitive Sealed Proposals.

A. Receipt and Safeguarding of Proposals.

The provisions of Paragraph 2045 apply to the receipt and safeguarding of proposals.

B. Receipt of Proposals

For the purposes of implementing Section 1530(3), Receipt of Proposals, the following requirements shall be followed:

Proposals shall be opened publicly by the Procurement Officer or designee in the presence of one or more witnesses at the time and place designated in the request for proposals. A Register of Proposals of those offering a proposal shall be prepared and shall be open to public inspection only after the issuance of an award or notification of intent to award.

Contents and the identify of competing offers shall not be disclosed during the process of opening by TTCECA personnel.

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 exempt from public disclosure.

D. Evaluation of Proposals.

The provisions of Paragraph 2055 apply to implement the requirements of Section 1530(5), Evaluation Factors.

E. Clarification and Minor Informalities and Irregularities in Proposals.

The provisions of Section 1520(13) apply to competitive sealed proposals.

F. Specified Types of Supplies, Services or Construction.

It is generally not practicable and or advantageous to the TTCECA to procure guaranteed energy, Water, or wastewater savings contracts by competitive sealed bidding.

G. Other Applicable Provisions.

The following paragraphs apply to competitive sealed proposals:

- (1) 2042, Pre-Bid Conferences
- (2) 2065, Rejection of Bids,
- (3) 2070, Rejection of Individual Bids,
- (4) 2075, All or None Qualifications,
- (5) 2085, Correction or Withdrawal of Bids; Cancellation of Awards, and Cancellation of Awards Prior to Performance.
- (7) 2135 Multi-term Contracts.

(H) Discussions with Offerors

(1) Classifying Proposals.

For the purpose of conducting discussions under Section 1530 and item (2) below, proposals shall be initially classified in writing as:

- (a) Acceptable (i.e. reasonably susceptible of being selected for award)
- (b) Potentially acceptable (i.e., reasonable susceptible of being made acceptable through discussions); or
- (c) Unacceptable

(2) Conduct of Discussions.

If discussions are conducted, the procurement officer shall exchange information with all offerors who submit proposals classified as acceptable or potentially acceptable. The content and extent of each exchange is a matter of the procurement officer's judgement, based on the particular facts of each acquisition. In conducting discussions, the procurement officer shall:

- (a) Control all exchanges;
- (b) Advise in writing every offeror of all deficiencies in its proposal, if any, that will result in rejection as non-responsive.
- (c) Attempt in writing to resolve uncertainties concerning the cost or price, technical proposal, and other terms and conditions of the proposal, if any;
- (d) Resolve in writing suspected mistakes, if any, by calling them to the offeror's attention;
- (e) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal, but only to the extent such revisions are necessary to resolve any matter raised by the procurement officer during discussions under items (2)(b) through (2)(d) above

(3) Limitations. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Ordinarily, discussions are conducted proper to final ranking. Discussions may not be conducted unless the solicitation alerts offerors to the possibility of such an exchange, including the possibility of limited proposal revisions for those proposals reasonably susceptible of being selected for award.

(4) Communications authorized by Section 1530(6) and items (1) – (3) above may be conducted only by procurement officers authorized by the appropriate chief officer.

Paragraph 2097 Rejection of Proposals.

A. Unless there is a compelling reason to reject one or more proposals, award will be made to the highest ranked responsible offeror or otherwise as allowed by Section 1530. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective offerors of any resulting modification or cancellation.

B. Cancellation of Solicitation Prior to Award.

(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the request for proposals shall be cancelled. A request for proposals may be cancelled after opening, but prior the issuance of an award or notification of intent to award, whichever is earlier, when such action is consistent with subsection A above and the procurement officer determines in writing that:

- (a) inadequate or ambiguous specifications were cited in the solicitation;
- (b) specifications have been revised;
- (c) the supplies, services, or construction being procured are no longer required;
- (d) the solicitation did not provide for consideration of all factors of cost to TTCECA, such as cost of transporting TTCECA furnished property to bidders' plants;
- (e) proposals received indicate that the needs of TTCECA 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 TTCECA.

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

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).

Paragraph 2098. Rejection of Individual Proposals.

- A. Proposals need not be unconditionally accepted without alteration or correction and to the extent otherwise allowed by law, the TTCECA stated requirements may be clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal.
- B. Reasons for rejecting proposals include but are not limited to:
 - (1) The business that submitted the proposal is nonresponsive as determined under Section 1810
 - (2) The proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the TTCECA in some material respect; or
 - (3) The proposed price unreasonable
- C. The reasons for rejection shall be made a part of the procurement file and shall be available for public inspection.
- D. Exceptions to Rejection Procedures
Any proposal received after the procurement officer of TTCECA or his designee has declared that the time set for opening has arrived, shall be rejected unless the proposal had been delivered to the location specified in the solicitation or the TTCECA's mail room which services that location prior to the bid opening.

Paragraph 2100 Small Purchases and Other Simplified Purchasing Procedures.

A. Authority.

- (1) Small purchases (under \$100,000) shall be made as provided in Section 1550. In accordance with Section 1550(2)(d), the TTCECA may:
 - (a) solicit written quotes, as further specified in Section 1550(2)(d);
 - (b) solicit bids in accordance with Section 1520, Competitive Sealed Bidding, Section 1525, Competitive Fixed Price Bidding, or Section 1528, Competitive Best Value Bidding; or
 - (c) solicit proposals in accordance with Section 1530, Competitive Sealed Proposals.
- (2) In accordance with Section 1550(3), procurements made under these procedures may not be protested under Section 4210 if the total or potential value of the awarded contract(s) does not exceed \$100,000.00.

B. 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 TTCECA 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 blanket purchase agreements 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 TTCECA Purchase Order Form. 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 or services shall be indicated by signature and date on the appropriate form by the authorized TTCECA representative after verification and notation of any exceptions.

F. Review Procedures. The TTCECA 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.

Paragraph 2105 Sole Source Procurements.

A. Application.

The following provisions apply to all sole source procurements unless emergency conditions exist as defined in Paragraph 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.
- (6) [Repealed]

The determination as to whether a procurement shall be made as a sole source shall be made by either the, TTCECA agency head or designee above the level of the procurement officer.. Such determination and the basis therefor shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. The restriction by TTCECA of a procurement to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

Paragraph 2110 Emergency Procurements.

A. Application.

The following provisions 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 TTCECA agency head, chief officer, or a designee of either office. 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 TTCECA;
- (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.

The TTCECA 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 TTCECA agency head, chief officer or designee of either office 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 TTCECA agency head, chief officer or designee of either shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor.

Paragraph 2125 Responsibility of Bidders and Offerors.

A. TTCECA Standards of Responsibility.

Factors to be considered in determining whether the TTCECA 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 TTCECA; and
- (5) Supplied all necessary information in connection with the inquiry concerning responsibility.

B. Duty of Contractor to Supply Information.

At any time prior to award, 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. In determining responsibility, the procurement officer may obtain and rely on any sources of information, including but not limited to the prospective contractor, knowledge of personnel within the TTCECA agency, commercial sources of supplier information, suppliers, subcontractors, and customers of the prospective contractor; financial institutions; government agencies; and business and trade associations.

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 Chief Officer or the Procurement Officer. 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.

Paragraph 2130 Prequalification of Supplies and Suppliers.

A. Qualified Products Lists.

A qualified products list may be developed with the approval of the TTCECA or the Procurement Officer of the TTCECA authorized to develop qualified products lists, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy TTCECA requirements. The procedures for the inclusion of a product on the qualified products list ("QPL") must be available to prospective vendors for consideration of their product to the list.

B. Prequalification

Prospective suppliers may be prequalified, and distribution of the solicitation may be limited to prequalified suppliers. Suppliers who meet the prequalification standards at any time shall be added

to the prequalified list for subsequent solicitations. The fact that a prospective supplier has been prequalified does not necessarily represent a finding of responsibility.

Paragraph 2135 Conditions for Use of Multi-term Contracts.

A. General.

A multi-term contract is a contract for the acquisition of supplies or services for more than one year. A contract is not a multi-term contract if no single term exceeds one year and each term beyond the first requires TTCECA to exercise an option to extend or renew.

A multi-term contract is appropriate when it is in the best interest of the TTCECA to obtain uninterrupted services extending over one year period, where the performance of such services involves high start-up costs, or when a changeover of service contracts involves high phase-in/phase-out costs during a transition period. The multi-term method of contracting is also appropriate when special production of definite quantities of supplies for more than one year period is necessary to best meet TTCECA needs but funds are available only for the initial fiscal period. Special production refers to production for contract performance when it requires alteration in the contractor's facilities or operations involving high start-up costs. The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds thereof. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be cancelled.

B. Objective.

The objective of the multi-term contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during changeover of service contracts.

C. Rule Inapplicable.

This Paragraph 2135 applies only to contracts for supplies or services described in Subsection A and does not apply to any other contract including, but not limited to, contracts for construction.

D. Conditions for Use.

(1) The maximum time for any multi-term contract is seven (7) years unless otherwise approved in accordance with Section 2030 . A multi-term contract may be used when it is determined in writing by the Procurement Officer that:

(a) Special production of definite quantities or the furnishing of long-term services are required to meet TTCECA needs; or

(b) a multi-term contract will serve the best interests of the TTCECA by encouraging effective competition or otherwise promoting economies in procurement.

(2) The following factors are among those relevant to such a determination:

(a) firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

(b) lower production cost because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;

(c) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality;

(d) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

E. Solicitation.

The solicitation shall state:

(1) the estimated amount of supplies or services required for the proposed contract period;

(2) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

(3) that the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either TTCECA's rights or the contractor's rights under any termination clause in the contract;

(4) that the Procurement Officer must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;

(5) whether bidders or offerors may submit prices for:

(a) the first fiscal period only;

(b) the entire time of performance only; or

(c) both the first fiscal period and the entire time of performance;

(6) that a multi-term contract may be awarded and how award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared; and

(7) that, in the event of cancellation as provided in (E) (3) of this Subsection, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

F. Award.

Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal period that award on the basis of prices for the first period does not permit the successful bidder or offeror to "buy in", that is give such bidder or offeror an undue competitive advantage in subsequent procurements.

Paragraph 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 TTCECA 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 TTCECA 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 this Appendix.

(5) "Specification for a Common or General Use Item" means a specification that 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 TTCECA 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 TTCECA that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the TTCECA'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.

(1) 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 TTCECA. To facilitate the use of such criteria, the TTCECA shall endeavor to include as a part of their 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.

(2) Brand Name or Equal Specification

(a) Brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required

(b) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

D. Preference for Commercially Available Products.

It is the general policy of the TTCECA 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.

E. [Repealed]

F. [Repealed]

Paragraph 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 that is most advantageous to the TTCECA 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 TTCECA may consider the results achieved on similar projects in the past and the methods used. Consideration may be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill TTCECA requirements.

(2) Flexibility.

The TTCECA, shall have sufficient flexibility in formulating the project delivery approach on a particular project to fulfill the TTCECA'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 TTCECA of requirements the project must satisfy and those other characteristics that would be in the best interest of the TTCECA.

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 TTCECA may consider whether a price can be obtained that is fair and reasonable when considered together with the benefit to the TTCECA potentially obtainable from such a contract.

(4) TTCECA Determination.

The TTCECA shall develop and review a written determination and it shall describe the construction contracting method chosen and set forth the facts and considerations that 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.

(3) [Repealed]

D. Architect-Engineer, Construction Management and Land Surveying Services Procurement.

(2) State Engineer's Office Review. The authority shall adhere to fire, life, and safety codes as required by the Office of State Engineer.

Paragraph 2152 Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.

A. Justification. When TTCECA proposes to enter into an agreement other than an outright purchase, TTCECA is responsible for the justification of such action.

Paragraph 2160 Assistance to Minority Businesses.

Subsection A. Definitions

- (1) "Minority Person" means a United States citizen who is economically and socially disadvantaged.
- (2) "Socially disadvantaged individuals" means those individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group without regard to their individual qualities. Such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian Pacific Americans, Women and other minorities to be designated by the board.
- (3) "Economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.
- (4) "A socially and economically, disadvantaged small business" means any small independent business concern which:
 - (a) At a minimum is fifty-one (51) percent owned by one or more citizens of the United States who are determined to be socially and economically disadvantaged and who also exercise control over the business.
 - (b) In the case of a corporation, at a minimum, fifty-one (51) percent of all classes of voting stock of such corporation must be owned by an individual or individuals determined to be socially and economically disadvantaged who also exercise control over the business.
 - (c) In the case of a partnership, at a minimum, fifty-one (51) percent of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged who also exercise control over the business.
- (5) "Small Business" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 C.F.R. Section 121 (1989). Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.
- (6) "Minority Business Enterprise" is a business that has been certified as a socially and economically disadvantaged small business.
- (7) "OSMBA" means the Office of Small and Minority Business Assistance of the Governor's Office.

Subsection B. Certification as a Minority Business Enterprise (MBE)

- (1) A business seeking certification as a Minority Business Enterprise must submit to OSMBA an application and any supporting documentation as may be required.



**Trident Technical College
Enterprise Campus Authority**

INDEPENDENT PROCUREMENT AUDIT REPORT

**For the Audit Period:
January 1, 2018 to December 31, 2020**

**Office of Audit & Certification
Division of Procurement Services
March 31, 2021**

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INTRODUCTION

The Division of Procurement Services (DPS) audited the Trident Technical College Enterprise Campus Authority's (TTCECA) internal procurement operating policies and procedures to determine whether, in all material respects, the internal controls of the TTCECA's approved Procurement Policy were adequate to ensure compliance with its Procurement Policy.

The management of TTCECA is responsible for its compliance with its Procurement Policy. Those responsibilities include the following:

- Identifying the TTCECA's procurement activities and understanding and complying with the Procurement Policy
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that the TTCECA administers its procurement programs in compliance with the Procurement Policy
- Evaluating and monitoring the TTCECA's compliance with the Procurement Policy
- Taking corrective action when instances of noncompliance are identified, including corrective action on audit findings of this audit

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. Projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Our review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

Total Expenditures

The TTCECA made no expenditures during the audit period.

BACKGROUND

The audit was conducted under the authority of Section 1230 of the TTCECA's approved Procurement Policy, which states in part, "The [Division of Procurement Services] in consultation with TTCECA, shall develop written plans for the auditing of procurements conducted pursuant to this Procurement Policy. Auditors from [DPS] shall review the adequacy of the TTCECA internal controls in order to ensure compliance with the requirements of this Procurement Policy."

The TTCECA Procurement Policy is authorized by SC Code Ann. § 59-53-480(B) and applies to all procurements of supplies, services, or construction by TTCECA for matters associated with the Enterprise Campus as that term is defined in § 59-53-465.

The TTCECA Procurement Policy was originally approved by the State Budget and Control Board on January 25, 2005. Section 841 of the TTCECA Procurement Policy requires that the Policy shall be resubmitted to the State Fiscal Accountability Authority for re-approval after five years. The TTCECA Procurement Policy expires at the end of the second quarter of the fifth calendar year following approval unless re-approved by the State Fiscal Accountability Authority.

On September 20, 2016, the State Fiscal Accountability Authority re-approved the TTCECA's Procurement Policy.

SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included testing, on a sample basis, evidence about the TTCECA's compliance with its approved Procurement Policy for the period January 1, 2018 through December 31, 2020, the audit period, and performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Approved Procurement Policy
- (2) All sole source and emergency procurement justifications, of which none were reported to DPS
- (3) Procurement transactions for the audit period as follows:
 - a) Purchase orders each exceeding \$10,000, of which there were none
 - b) Direct expenditure voucher (DEV) payments, of which there were none
 - c) A block of sequential expenditures reviewed against the use of order splitting or favored vendors, of which there were none
 - d) P-Card transactions, of which there were none
- (4) Small and Minority Business utilization plans and reports. There was no MBE expenditure activity during the audit period
- (5) Information Technology acquisitions under IT Plans, of which there were none
- (6) Reporting of surplus property dispositions, and approval of trade-ins in excess of \$5,000, of which there were none
- (7) Disposition of unauthorized procurements, of which there were none

RESULTS OF AUDIT

The TTCECA was found to be in compliance with its approved Procurement Policy during the audit period.

The following minor issue was identified during the audit:

Use of State-Term Contracts

Use of State-Term Contracts Excluded From Approved Procurement Policy

We found the Authority had complied with its approved Procurement Policy during the audit period. However, TTCECA's Procurement Policy did not require the use of State-Term contracts.

SC Code Ann. 11-35-310(37) defines term contracts as "contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term."

Recommendation: We recommend requiring the use of state "Term Contracts" as defined in SC Code Ann. § 11-35-310(37) in the Authority's Procurement Policy.

During the audit, the TTCECA made the recommended change to its Procurement Policy.

RECOMMENDATION

Section 1230 of the Trident Technical College Enterprise Campus Authority's approved Procurement Policy requires the auditors from the [Division of Procurement Services] to review the adequacy of the Trident Technical College Enterprise Campus Authority's internal controls to ensure compliance with its Procurement Policy. Any noncompliance discovered through audit must be transmitted in management letters to the Trident Technical College Enterprise Campus Authority and the State Fiscal Accountability Authority. The auditors shall provide in writing proposed corrective action to the Authority. This report satisfies that requirement.

We found TTCECA's internal procurement operations to be consistent with its approved Procurement Policy.

As provided in Section 841 of the Trident Technical College Enterprise Campus Authority's Procurement Policy, we recommend that the Trident Technical College Enterprise Campus Authority's revised Procurement Policy be approved for a period of five years.



Juwan Bailey
Senior Auditor



Crawford Milling, CPA, CGMA
Director of Audit & Certification

SECTION 11-35-1230. Auditing and fiscal reporting.

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

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

SECTION 59-53-480. Exemptions from statutory bonding, leasing, procurement, and disposition of surplus property requirements; adoption of procurement policy.

(B) For all matters associated with the enterprise campus, the authority is exempt from the South Carolina Consolidated Procurement Code; except that, the authority shall adopt a procurement policy requiring competitive solicitations, and the policy must be filed with and approved by the State Fiscal Accountability Authority. The policy must include provisions for audit and recertification.

AGENCY: Division of Procurement Services

SUBJECT: Waiver to Extend the Maximum Time on a Multi-term Contract for Clemson University

Section 11-35-2030(5), of the SC Consolidated Procurement Code limits the maximum potential duration for any contract to seven years unless the Authority approves a longer maximum potential duration. Clemson University seeks Authority approval to solicit a contract with a maximum potential duration of up to eleven (11) years after implementation for an Enterprise Resource Planning (ERP) system.

Clemson proposes to implement a Software as a Service (SaaS) ERP solution to include Financial, and Human Resources components. Clemson believes a contract performance term of up to eleven years after implementation will:

- (a) Substantially lower the State's costs associated with its upfront investment by amortizing these costs over a longer period of time;
- (b) Increase customer service through incentivizing high level of service for a longer period to assure contract extensions;
- (c) Align the contract with the expected life of the solution;
- (d) Enable negotiation of contract terms more favorable to Clemson;
- (e) Increase competitions, and
- (e) Reduce the impact and disruption of day-to-day business activities of Clemson and vendors associated with implementing a new system.

AUTHORITY ACTION REQUESTED:

Under authority of SC Consolidated Procurement Code Section 11-35-2030(5), approve Clemson's request for a multi-term contract for an ERP system and authorize the solicitation of proposals and award of a contract with a maximum potential duration of eleven (11) years after implementation.

ATTACHMENTS:

Agenda item worksheet and attachment

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

Meeting Scheduled for: 5/31/2022

Regular Agenda

1. Submitted by:

- (a) Agency: Division of Procurement Services
(b) Authorized Official Signature:


John St. C. White, Materials Management Officer

2. Subject: Other-Specify

Waiver to extend the maximum time on a multi-term contract for Clemson University.

3. Summary and Background Information:

Section 11-35-2030(5), of the SC Consolidated Procurement Code limits the maximum potential duration for any contract to seven years unless the Authority approves a longer maximum potential duration. Clemson University seeks Authority approval to solicit a contract with a maximum potential duration of up to eleven (11) years after implementation for an Enterprise Resource Planning (ERP) system.

Clemson proposes to implement a Software as a Service (SaaS) ERP solution to include Financial, and Human Resources components. Clemson believes a contract performance term of up to eleven years after implementation will:

- (a) Substantially lower the State's costs associated with its upfront investment by amortizing these costs over a longer period of time;
- (b) Increase customer service through incentivizing high level of service for a longer period to assure contract extensions;
- (c) Align the contract with the expected life of the solution;
- (d) Enable negotiation of contract terms more favorable to Clemson;
- (e) Increase competitions, and
- (e) Reduce the impact and disruption of day-to-day business activities of Clemson and vendors associated with implementing a new system.

- 4. What is the Authority asked to do?** Under authority of SC Consolidated Procurement Code Section 11-35-2030(5), approve Clemson's request for a multi-term contract for an ERP system and authorize the solicitation of proposals and award of a contract with a maximum potential duration of eleven (11) years after implementation.

- 5. What is recommendation of the submitting agency involved?** Approve the request as stated above.

6. Private Participant Disclosure – Check one:

- ☒ No private participants will be known at the time the Authority considers this agenda item.
☐ A Private Participant Disclosure form has been attached for each private participant.
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.

7. Recommendation of other office (as required)?

- (a) Authorized Signature: _____
(b) Office Name: _____
-

8. List of Supporting Documents:

A-Request and Memorandum in Support of an Eleven-Year Performance Term
B- Section 11-35-2030 of the SC Consolidated Procurement Code
C – Extended terms previously approved by the Authority

9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.

Exhibit A

April 14, 2022

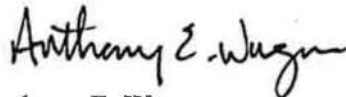
Via Electronic Mail

Delbert Singleton
Director, Procurement Service Division and Authority Secretary
South Carolina State Fiscal Accountability Authority
1201 Main Street, Suite 600
Columbia, SC 29201

Dear Mr. Singleton,

Please find the attached request for waiver of the state contract multi-term contract length requirements. In line with how MUSC contracted for their ERP system in 2019, Clemson is requesting an 11 year performance term contract made up of an initial five (5) year contract with two (2) three (3) year optional renewal terms that would begin after implementation was complete. We believe this request is in line with best practices in the industry for a contract of this scope as well as in line with how our peer higher education institution recently handled a similar contract for their school.

Respectfully,



Anthony E. Wagner
EVP for Finance and Operations
Clemson University

Enclosure