

CHAPTER 8

MISCELLANEOUS PROCUREMENTS

8.1 RELATED STATUTORY AUTHORITY

- 8.1.1 SC Code § 11-35-540 permits SFAA to promulgate regulations, to approve agencies internal operational procedures for procurement, and to audit and monitor agencies procurement procedures.
- 8.1.2 SC Code § 11-35-1550 permits agencies to procure small purchases in accordance with regulations established by SFAA.
- 8.1.3 SC Code § 11-35-1560 permits the Chief Procurement Officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer, to authorize in writing a sole source procurement.
- 8.1.4 SC Code § 11-35-1570 permits the Chief Procurement Officer, the head of a purchasing agency, or a designee of either officer to authorize emergency procurements.
- 8.1.5 SC Code § 11-35-2440 requires that all sole source procurements and emergency procurements be reported to the appropriate Chief Procurement Officer.
- 8.1.6 SC Code § 11-35-3030 requires governmental bodies to obtain labor and material payment bonds on any contract to improve real property if the contract is valued in excess of \$50,000.
- 8.1.7 SC Regulation 19-445.2105 sets forth standards for sole source procurements.
- 8.1.8 SC Regulation 19-445.2110 sets forth standards for emergency procurements.

8.2 TYPES OF MISCELLANEOUS PROCUREMENTS

- 8.2.1 Small Purchases
- 8.2.2 Sole Source Procurements
- 8.2.3 Emergency Procurements

8.3 SMALL PURCHASES

- 8.3.1 **Protest Rights:** Protest rights do not apply to contracts awarded under the Small Purchase procedures set forth in this section.
- 8.3.2 **Limits for Small Purchases:**
 - A. Small purchases are limited to an amount of \$50,000 or less.
 - B. Each agency may have additional internal procedures that further limit the authority to make small purchases. The Agency's internal procedures should be verified with their procurement officer.
 - C. Sales tax is not included in the purchase price when determining the method of procurement.
- 8.3.3 **Competition Requirements:** The specific requirements on the agency to obtain competition for small purchases depend on the amount of the awarded contract or purchase order.
 - A. PURCHASES OF \$2,500 OR LESS:
 - 1. Agency may make small purchases with a total cost of \$2,500 or less without getting competitive quotes. For approved Higher Education Institutions, this limit is \$10,000.
Note: For approved Higher Education Institutions, SC Code § 11-35-1550 was amended effective August 5, 2011 to raise the small purchase limit for procurements without receiving quotes to \$10,000. All Universities are approved by the statute to use this higher limit. Each Technical College must receive approval from the State Board for Technical and Comprehensive Education to use the higher limit. No other small purchase limits were changed.
 - 2. The Agency should distribute these purchases equitably among qualified suppliers. Unless it is impractical, the agency should solicit bids from other suppliers before giving the previous supplier a repeat order.
 - 3. The Agency should make the purchase on a purchase requisition form provided by the Agency's procurement officer.
 - 4. The procurement officer or his designee must annotate the purchase requisition with the words "Price is fair and reasonable" and sign it.

5. The Agency is only required to verify the reasonableness of the price when the procurement officer of the agency suspects that the price may not be reasonable, e.g., by comparison to the previous price paid or personal knowledge of the item involved.
- B. PURCHASES OVER \$2,500 BUT LESS THAN OR EQUAL TO \$10,000:**
1. The Agency must solicit written quotes from a minimum of three qualified sources of supply. The Agency must award to the lowest responsive and responsible source. (See Chapter 6 for more information on the evaluation of a bidder's responsiveness and responsibility.) This provision does not apply to approved Higher Education Institutions.
 2. The Agency should make the purchase on a purchase requisition form provided by the agency's procurement officer, with the following attached in the agency file:
 - a. Documentation of the quotes; and
 - b. A statement documenting that the procurement is to the advantage of the State (price and other factors considered), including the administrative cost of the purchase.
- C. PURCHASES OVER \$10,000 BUT LESS THAN OR EQUAL TO \$50,000:**
1. The agency must advertise for written bids in SCBO under the "Minor Construction" section.
 2. The Agency must award to the lowest responsive and responsible source. (See Chapter 6 for more information on the evaluation of a bidder's responsiveness and responsibility.)
 3. The Agency should make the purchase on a purchase requisition form provided by the agency's procurement officer, with the following attached in the agency file:
 - a. A copy of the written solicitation and written bids; and
 - b. A statement documenting that the procurement is to the advantage of the State (price and other factors considered), including the administrative cost of the purchase.
- 8.3.4** Agencies should not use the Small Purchase procedures when the anticipated award price is greater than approximately \$45,000. In the event the lowest responsive and responsible bid is greater than the \$50,000 small purchase limit, the agency will be required to cancel the solicitation and re-bid using the competitive sealed bidding process described in Chapter 6.

8.4 SOLE SOURCE PROCUREMENTS

8.4.1 Agency's Authorization of Sole Source Procurements:

- A. The Agency must determine for itself that there is only one source for the required service or construction.
- B. The chief procurement officer, the head of the Agency or their designee above the level of the agency's procurement officer, must authorize the sole source procurement.
- C. The Agency must document, in writing, its determination that there is only one source for the service or construction and its authorization for the purchase.
- D. The Agency must place a copy of its written determination in its procurement file.
- E. The Agency's determination is subject to protest.
- F. All Sole Source Procurements will be audited by Audit and Certification.

8.4.2 OSE Code Review:

OSE must review, for building code compliance, the design and construction of Sole Source Procurements that exceed an Agency's construction procurement certification.

8.4.3 Basis and Procedure for Sole Source Procurements:

See SC Regulation 19-445.2105 for the basis of making a sole source procurement and the requirements for the determination that a sole source procurement is necessary.

8.4.4 Bid Security, Bonds and Insurance for Sole Source Procurements:

- A. The Agency need not require bid security for a sole source procurement; however, the agency must require the contractor to provide a performance bond and labor and material payment bond when the sole source procurement is for construction greater than \$50,000.
- B. The agency may waive bonding requirements for construction contracts under \$50,000, if they have protected the interests of the State.
- C. The contractor must provide the standard contractor's insurance policies.
- D. See Chapter 6 for detailed information concerning bond and insurance requirements.

8.4.5 Change Orders or Amendments to Sole Source Procurements:

- A. The Agency may only authorize change orders to meet a change in scope, time, or cost directly related to the sole source procurement.
- B. The Agency may not use change orders to add additional procurements that the Agency can obtain from other qualified sources.
- C. If the Agency does authorize any change orders, they must submit them to OSE marked “Sole Source Procurement – For Information Purposes Only.”
- D. OSE will neither acknowledge receipt of this documentation nor approve the changes.

8.4.6 Reporting Sole Source Procurements:

- A. The Agency must submit a quarterly report of all sole source procurements to the Materials Management Office (MMO) as directed by Audit and Certification at the following link: <https://reporting.procurement.sc.gov>.
- B. The Agency must also submit construction-related sole source procurements to OSE on the form MMO/OSE-102, within 10 days of contract award. The Agency must submit the contract documents to OSE marked “Sole Source Procurement – For Information Purposes Only.”
- C. OSE will neither acknowledge receipt of this documentation nor approve the purchase.

8.5 EMERGENCY PROCUREMENTS**8.5.1 Agency Authorization of Emergency Procurements**

- A. The Agency must determine for itself the need for an emergency procurement.
- B. The chief procurement officer, the head of the Agency or their designee must make or authorize an emergency procurement. The Agency may only make an emergency procurement when there is an immediate threat to public health, welfare, critical economy and efficiency, or safety.
- C. The Agency must document, in writing, the emergency condition and the circumstances or events that resulted in the emergency condition.
- D. The Agency must place a copy of its written determination in its procurement files.
- E. The Agency’s determination to proceed with an emergency procurement is subject to protest.
- F. All Emergency Procurements will be audited by Audit and Certification.

8.5.2 OSE Code Review

OSE must review, for building code compliance, the design and construction of Emergency Procurements that exceed the Agency’s construction procurement certification. OSE will expedite this review.

8.5.3 Permanent Improvement Project Approval

If the emergency procurement results in a project meeting the definition of a Permanent Improvement Project, the Agency must submit the project to SFAA immediately for approval.

8.5.4 Basis and Procedure for Emergency Procurement

See S.C. Regulation 19-445.2110 for the requirements for an emergency purchase and for the determination that an emergency purchase is necessary. See Sloan v. DOT, Opinion No. 26534 (S.C. 2008) for the definition of an emergency as set forth by the South Carolina Supreme Court. You may find the Supreme Court’s decision at: http://procurement.sc.gov/files/Sloan_v._DOT.pdf

8.5.5 Emergency When Competitive Sealed Bidding is Unsuccessful

- A. Whenever competitive sealed bidding is unsuccessful and the Agency determines that an emergency exists because time or other circumstances will not permit the delay required to re-solicit competitive sealed bids without a significant negative impact on the ability of the agency to fulfill its mission, then the Agency may negotiate a contract as follows:
 1. The Agency must notify each responsible bidder who submitted a bid under the original solicitation in writing of the agency’s determination and give each such bidder a reasonable opportunity to negotiate.
 2. The Agency must conduct such negotiations independently and may not share any information regarding the preliminary or best and final offers of any bidder with other bidders.
 3. The Agency may award a contract if:
 - a. The final negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation; and
 - b. The final negotiated price is the lowest offered by any responsible and responsive offeror.

- B. An Agency considering negotiation of a construction contract under a declared Emergency should contact OSE for guidance.

8.5.6 Bonds and Insurance

- A. The Agency must require the contractor provide a performance bond and labor and material payment bond when the emergency procurement is for construction of \$50,000 or more.
- B. The Agency may waive bonding requirements for construction under \$50,000, if they have protected the interests of the State.
- C. Insurance provided by the contractor or A/E is required on all Emergency Procurements.
- D. See Chapter 6 for additional information concerning bond and insurance requirements.

8.5.7 Change Orders or Amendments to Emergency Procurements

- A. The Agency may only authorize a change order to meet a change in scope, time, or cost specifically related to the conditions or circumstances that justified the emergency procurement.
- B. The Agency may not use change orders to add additional procurements that are not necessary to respond to the emergency.
- C. If the Agency does authorize any change orders, they must submit them to OSE marked "Emergency Procurement - For Information Purposes Only."
- D. OSE will neither acknowledge receipt of this documentation nor approve the changes.

8.5.8 Reporting Emergency Procurements

- A. The Agency must submit a quarterly report of all emergency procurements to the Materials Management Office (MMO) as directed by Audit and Certification at the following link: <https://reporting.procurement.sc.gov> .
- B. The Agency must also submit construction-related emergency procurements to OSE on the OSE/MMO-103 within 10 days of contract award. The Agency must submit the contract documents to OSE marked "Emergency Procurement – For Information Purposes Only."
- C. OSE will neither acknowledge receipt of this documentation nor approve the purchase.