

**CLEMSON UNIVERSITY PROCUREMENT CODE  
FOR  
ECONOMIC DEVELOPMENT INFRASTRUCTURE**

ARTICLE 1.

GENERAL PROVISIONS

**SECTION 10.** Citation.

This chapter shall be known and may be cited as the “Clemson University Procurement Code for Economic Development Infrastructure”. This chapter is adopted pursuant to Section 11-41-180 of the South Carolina Code of Laws. Every solicitation, and every advertisement or notice of a solicitation, issued or published pursuant to this chapter shall state as follows: PURSUANT TO SECTION 11-41-180, THIS PROCUREMENT IS CONDUCTED IN ACCORDANCE WITH CLEMSON UNIVERSITY'S PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE.

**SECTION 20.** Purpose and policies.

The underlying purposes and policies of this code are:

- (a) to provide increased economy in Clemson University procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to Clemson University and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;
- (b) to foster effective broad-based competition for Clemson University 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 Clemson University;
- (f) to ensure the fair and equitable treatment of all persons who deal with Clemson University;
- (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 Clemson University procurement process; and
- (h) to foster environmental awareness by evaluating and incorporating “state of the art” technologies within economic guidelines;
- (i) to promote citizenship by encouraging partners to provide a safe, healthy work environment involving minorities, disadvantaged business enterprises and promote use of the South Carolina workforce;
- (j) to construct facilities using “sustainability” tenets to maximize facility usefulness and longevity;
- (k) to evaluate and incorporate facility technology advances to display a commitment to learning and development of new technology;
- (l) to construct facilities which promote learning, collaboration and meld the business and learning processes.

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**  
**MAY 4, 2004**

|  |
|--|
| <b>SECTION 30. Obligation of good faith.</b>   |
| Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.  |
| <b>SECTION 40. Application of this Code.</b>   |
| (1) General Application. This code applies only to contracts solicited or entered into after the effective date of this code unless the parties agree to its application to a contract entered into prior to its effective date.   |
| (2) Application to State Procurement. This code, and the accompanying regulations, are authorized by Section 11-41-180 and shall apply to every procurement of infrastructure, as defined in Section 11-41-30, by Clemson University that relates specifically to an economic development project approved pursuant to Section 11-41-80.   |
| (3) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance or contract funds, Clemson University shall also comply with such federal law and authorized regulations as are mandatorily applicable and which are not presently reflected in the code. Where federal assistance or contract funds are used in a procurement by Clemson University, 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 Clemson University 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 code in the same manner as Clemson University. The definition and application of the terms "acquisition", "financing", "construction", and "leasing" are governed by standards and principles established by the State Auditor. |
| <b>SECTION 45. Payment for supplies and services.</b>  |
| 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   |
| <b>SECTION 210. Determinations.</b>  |
| Written determinations and findings required by the code shall be retained in an official contract file by Clemson University. Such determinations shall be documented in sufficient detail to satisfy the requirements of audit as provided for in Section 1230.  |
| SUBARTICLE 5.  |
| DEFINITIONS OF TERMS USED IN THIS CODE   |
| <b>SECTION 310. Definitions.</b>   |
| Unless the context clearly indicates otherwise:  |
| (1) Deleted  |

# CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE

MAY 4, 2004

|  |
|--|
| (2) "Board" means State Budget and Control Board.  |
| (3) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.   |
| (4) "Change order" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.  |
| (5) "Chief procurement officer" means the person, above the level of procurement officer, designated in writing as such by the president of Clemson University.  |
| (6) Deleted  |
| (7) "Construction" means the process of building, altering, repairing, remodeling, improving, or demolishing any Clemson University structure or building or other improvements of any kind to any real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings, or real property.  |
| (8) "Contract" means all types of agreements for the procurement of supplies, services, or construction.   |
| (9) "Contract modification" means a written order signed by the Clemson University 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 Clemson University.  |
| (11) Deleted   |
| (12) Deleted   |
| (13) "Days" means calendar days. In computing any period of time prescribed by this code or the regulations, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state, then the period shall run to the end of the next business day.                |
| (14) Deleted   |
| (15) "Designee" means a duly authorized representative of a person with formal responsibilities under the procedure.   |
| (16) "Employee" means an individual drawing a salary from Clemson University and any nonsalaried individual performing personal services for Clemson University.   |
| (17) Deleted   |
| (18) Deleted   |
| (19) Deleted   |
| (20) "Invitation for Bids" means a written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of stated supplies, services, or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.   |
| (21) Deleted   |
| (22) Deleted   |
| (23) Deleted   |
| (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 Clemson University to enter into and administer contracts and make written determinations and findings with respect thereto.  |
| (26) Deleted   |
| (27) Deleted   |
| (28) "Request for Proposals (RFP)" means a written or published solicitation issued by an authorized 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 Clemson   |

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

MAY 4, 2004

University. The award of the contract must be made on the basis of evaluation factors which must be stated in the RFP.

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

(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 Clemson University.

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

(32) "State" means state government.

(33) Deleted

(34) Deleted

(35) Deleted

(36) Deleted

**SUBARTICLE 7.**

**PUBLIC ACCESS TO PROCUREMENT INFORMATION**

**SECTION 410.** Public access to procurement information.

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

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

(1) customer lists;

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

(3) design concepts, including methods and procedures;

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

Evaluative documents 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.

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

**ARTICLE 3**

**PROCUREMENT ORGANIZATION**

**SUBARTICLE 1**

**COMMITTEES AND MANAGEMENT**

**SECTION 540.** Authority and duties of Clemson University.

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**  
**MAY 4, 2004**

(1) Procurement Regulations. In conjunction with this code, Clemson has adopted procurement regulations governing the procurement, management, and control of any acquisitions conducted pursuant to this code. Such regulations shall be binding in all procurements made pursuant to this code.

(2) Approval of Operational Procedures. Clemson shall be authorized to develop internal operational procedures consistent with this code and the regulations.

**SUBARTICLE 3.**

**EXEMPTIONS**

**SECTION 710. Exemptions.**

The board may exempt specific procurements from the purchasing procedures required by this code and regulations.

**SUBARTICLE 5**

**OFFICES CREATED**

**SECTION 840. Delegation of authority.**

Subject to this code and regulations, the chief procurement officer may delegate authority to designees.

**SUBARTICLE 9**

**AUDITING AND FISCAL REPORTING**

**SECTION 1210. Certification.**

The code and regulations were approved and certified by the State Budget and Control Board on May 4, 2004. The code and regulations shall be resubmitted to the Board for recertification during the first quarter of the fifth year following initial approval. The code and regulations expire at the end of the second quarter of the fifth year following initial approval unless reapproved by the Board.

**SECTION 1230. Auditing**

1) The Materials Management Office, in consultation with Clemson University, shall develop written plans for the auditing of procurements conducted pursuant to this code and regulations.

Auditors from the Board's Office of Materials Management shall review the adequacy of Clemson University's internal controls in order to ensure compliance with the requirement of this code and the ensuing regulations. Any noncompliance discovered through audit must be transmitted in management letters to Clemson University and the Budget and Control Board. The auditors shall provide in writing proposed corrective action to Clemson University. Based upon audit recommendations of the auditors, the board may revoke Clemson University's authority under this code and regulations. . Costs associated with the internal review and audit are the responsibility of Clemson University and will be paid to the entity performing the audit.

ARTICLE 5.

SOURCE SELECTION AND CONTRACT FORMATION

SUBARTICLE 1

DEFINITIONS

**SECTION 1410.** Definitions of terms used in this article.

Unless the context clearly indicates otherwise:

(1) [reserved]

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

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

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

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

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

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

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

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

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

SUBARTICLE 3.

METHODS OF SOURCE SELECTION

**SECTION 1510.** Methods of source selection.

Unless otherwise provided by law, all Clemson University contracts shall be awarded pursuant to Section 1520 or Section 1530, except as provided in:

(1) Deleted

(2) Deleted

(3) Deleted

(4) Deleted

(5) Deleted

(6) Deleted

(7) Section 1540 (Negotiations After Unsuccessful Competitive Sealed Bidding);

(8) Section 1550 (Small Purchases);

(9) Section 1560 (Sole Source Procurements);

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

MAY 4, 2004

|  |
|--|
| (10) Section 1570 (Emergency Procurements);  |
| (11) Deleted   |
| (12) Deleted   |
| (13) Section 3020 (Construction Procurement Procedures);   |
| (14) Section 3220 (Architect-Engineer, Construction Management and Land Surveying Services Procurement Procedures);  |
| (15) Section 3230 (Exception for Small Architect-Engineer and Land Surveying Services Contracts).  |
| (16) Deleted   |
|  |
| <b>SECTION 1520. Competitive sealed bidding.</b>   |
|  |
| (1) Condition for Use. Contracts amounting to one hundred thousand dollars or more shall be awarded by competitive sealed bidding except as otherwise provided in Section 1510.  |
| (2) Invitation for Bids. An invitation for bids shall be issued in an efficient and economical manner and shall include specifications and all contractual terms and conditions applicable to the procurement.   |
| (3) Notice. Adequate notice of the invitation for bids shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice shall include publications in a newspaper of general circulation in the State such as "South Carolina Business Opportunities."   |
| (4) Receipt and Safeguarding of Bids. All bids (including modifications) received prior to the time of opening shall be kept secure and unopened, except as provided for by the procurement regulations.   |
| (5) Bid Opening. Bids shall be opened in the presence of the chief procurement officer or his designee and one or more witnesses in the manner prescribed by the procurement regulations. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be tabulated.  |
| (6) Bid Acceptance and Bid Evaluation. Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. Bids shall be evaluated based on the requirements set forth in the invitation for bids and in accordance with the regulations.   |
| (7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and reaward of awards or contracts, after award but prior to performance may be permitted in accordance with regulations. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of Clemson University or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards, or contracts, after award but prior to performance shall be supported by a written determination of appropriateness made by the chief procurement officers. |
| (8) Discussion with Bidders. As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in the procurement officer'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.   |
| (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 produced or manufactured products, when known, and items produced or manufactured out of the State must be resolved in favor of the South Carolina commodity.  |
| (c) Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in the same taxing jurisdiction as the governmental body's consuming location.  |
| (d) Tie bids involving South Carolina firms in the same taxing jurisdiction as the governmental body's consuming   |

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

MAY 4, 2004

location must be resolved by the flip of a coin in the office of the chief procurement officer or the head of a purchasing agency or either officer's designee 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 procurement officer witnessed by all interested parties.

(10) Award. Unless there is a compelling reason to reject bids as prescribed by the procurement regulations, notice of an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location specified in the invitation for bids. Prior to the posting of the award, the procurement officer 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). 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, six days after notice is given Clemson University may enter a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. When only one response is received, the notice of intended award and the six-day delay of award may be waived. A determination of responsibility must be made before award in accordance with Section 1810.

(11) Prequalification. Prior to soliciting bids, the procurement officer may issue a request for qualifications from prospective bidders. Such request shall contain at a minimum a description of the general scope of the work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective bidders' qualifications, experience, and ability to perform the requirements of the contract. In the procurement officer's discretion, the request may require any additional information, including but not limited to the following: confidence in the team, value for price, confidence in schedule adherence, reputation and experience, capacity, safety record, location (state), license limits, past performance, backlog, procedures, use of disadvantaged business enterprises, and use of the South Carolina labor force. The prequalification process may include interviews with all or some subset of those submitting responses. Adequate public notice of the request for qualifications shall be given in the manner provided in Section 1520(3).

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

(12) [reserved]

(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 the State. 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



**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**  
MAY 4, 2004

|  |
|--|
| bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;   |
| (d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if:   |
| (i) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid, thereon, provided that the bidder states under oath that it received the amendment prior to bidding and that the bidder will stand by its bid price or,  |
| (ii) the amendment has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the governmental body;  |
| (e) failure of a bidder to furnish an affidavit concerning affiliates;   |
| (f) failure of a bidder to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs;   |
| (g) failure of a bidder to furnish cut sheets or product literature;   |
| (h) failure of a bidder to furnish certificates of insurance;  |
| (i) failure of a bidder to furnish financial statements;   |
| (j) failure of a bidder to furnish references;   |
| (k) failure of a bidder to furnish its bidder number; and  |
| (l) notwithstanding Title 40 of the South Carolina Code of Laws, the failure of a bidder to indicate his contractor's license number or other evidence of licensure, provided that no contract shall be awarded to the bidder unless and until the bidder is properly licensed under the laws of South Carolina.   |
| <b>SECTION 1523. Preferences.</b>  |
| (1) Preferred contractors and suppliers are those that:  |
| (a) have, in Clemson University's judgment, a significant presence in South Carolina;  |
| (b) have products made, manufactured or grown in South Carolina;   |
| (c) employ South Carolina workers; or  |
| (d) use or subcontract with a business either (i) certified as a Minority Business Enterprise by the South Carolina Office of Small and Minority Business Assistance or (ii) by an entity or authority recognized by Clemson University.   |
| (2) In evaluating the qualifications of a prospective contractor, either for prequalification or evaluation, Clemson University may use any of these preferences as factors. A specific value shall not be applied to quantify the preference but the prospective bidder's plan to achieve the preference shall be considered in the qualification process.  |
| <b>SECTION 1530. Competitive sealed proposals.</b>   |
| (1) Conditions for Use. A contract may be entered into by competitive sealed proposals subject to the provisions of Section 1520 and the procurement regulations, unless otherwise provided for in this section.   |
| (2) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 1520(3).   |
| (3) Receipt of Proposals. Proposals shall be opened in accordance with regulations. A tabulation of proposals shall be prepared in accordance with regulations promulgated by Clemson University.  |
| (4) Prequalification. 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 general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information on their qualifications, experience, and ability to perform the requirements of the contract. In the procurement officer's discretion, the request may also require any of the following additional information: : confidence in the team, value for price, confidence in schedule adherence, |

# CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE

MAY 4, 2004

reputation and experience, capacity, safety record, location (state), license limits, past performance, backlog, procedures, use of disadvantaged business enterprises, and use of the South Carolina labor force. The prequalification process may include interviews with all or some subset of those submitting responses. Adequate public notice of the request for qualifications shall be given in the manner provided in Section 1520(3).

After receipt of the responses to the request for qualifications from prospective offerors, the perspective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top two prospective offerors by means of a request for proposals. The failure of a prospective offeror to be selected to receive the request for proposals shall not be grounds for protest under Section 4210.

(5) Evaluation Factors. The request for proposals shall state the relative importance of the factors to be considered in evaluating proposals but shall not require a numerical weighting for each factor. Price may but need not be an evaluation factor.

(6) Discussion with Offerors. As provided in the Request for Proposals, and under regulations, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. All offerors, whose proposals, in the procurement officer's sole judgment, need clarification may be accorded such an opportunity.

(7) Selection and Ranking. Proposals shall be evaluated using only the criteria stated in the request for proposals and there must be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to Clemson University, considering only the evaluation factors stated in the request for proposals. 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 his sole discretion, proceed in any of the manners indicated below:

(a) Negotiate with the highest ranking offeror 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 on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the procurement officer, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the procurement officer in his sole discretion; or

(b) During the negotiation process as outlined in subsection (a), if the procurement officer is unsuccessful in its first round of negotiations, it may reopen negotiations with any offeror with whom it previously negotiated; or

(c) The procurement officer may make changes within the general scope of the request for proposals and provide all offerors an opportunity to submit their best and final offers.

(d) 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 responsible offeror whose proposal is determined in writing to be the most advantageous to Clemson University, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the procurement officer 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.

## **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 procurement officer, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the chief procurement officer 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:

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

MAY 4, 2004

- |  |
|--|
| (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 bidder under the original solicitation;  |
| (3) the negotiated price is the lowest negotiated price offered by any responsible offeror.  |

|   |
|---|
| <b>SECTION 1550.</b> Bid procedures on procurements not exceeding one hundred thousand dollars. |
|---|

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

|   |
|---|
| (2) Competition and Price Reasonableness. (a) Purchases Not in Excess of Six Thousand Dollars. Small purchases not exceeding six thousand dollars may be accomplished without securing competitive quotations if the prices are considered to be reasonable. The purchasing office shall annotate the purchase requisition: "Price is fair and reasonable" and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase "not in excess of" may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement officer suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved. |
|---|

|   |
|---|
| (b) Purchases from Six Thousand One Dollars to Twenty Thousand Dollars. Solicitations of verbal or written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source. |
|---|

|  |
|--|
| (c) Purchases from Twenty Thousand One Dollars to Forty 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 sources. |
|--|

|   |
|---|
| (d) Purchases from Forty Thousand One Dollars to One Hundred Thousand Dollars. Written solicitation of written quotes, bids, or proposals shall be made. The procurement must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the Chief Procurement Officer. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror. |
|---|

- |  |
|--|
| (3) All competitive procurements above forty thousand dollars must be advertised at least once in the South Carolina Business Opportunities publication. |
|--|

|   |
|---|
| <b>SECTION 1560.</b> Sole source procurement. |
|---|

|   |
|---|
| A contract may be awarded for a supply, service, or construction item without competition when, the President of Clemson University determines in writing that there is only one source for the required supply, service, or construction item. |
|---|

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

|  |
|--|
| <b>SECTION 1570.</b> Emergency procurements. |
|--|

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

**MAY 4, 2004**

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

**SUBARTICLE 5**

**CANCELLATION OF SOLICITATIONS**

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

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

**SUBARTICLE 7.**

**RESPONSIBILITY OF BIDDERS AND OFFERORS**

**SECTION 1810.** Responsibility of bidders and offerors.

(1) Determination of Responsibility. Responsibility of the bidder or offeror shall be ascertained for each contract let by Clemson University based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts. The procurement regulations establish standards of responsibility that shall be enforced in all contracts awarded pursuant to this code.

(2) Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with procurement regulations. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(3) Right of Nondisclosure. Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the offices of Clemson University without prior written consent by the bidder or offeror.

**SECTION 1820.** Prequalification of supplies and suppliers.

The procurement regulations may provide for prequalification of suppliers or supplies.

**SECTION 1830.** Cost or pricing data.

(1) Contractor Certification. A contractor shall, except as provided in subsection (3) of this section, submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of mutually determined specified date prior to the date of:

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

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

**MAY 4, 2004**

(b) the pricing of any change order or contract modification which exceeds an amount established by the Clemson University procurement code.

(2) Price Adjustment. Any contract, change order or contract modification under which a certificate is required shall contain a provision that the price to Clemson University, including profit or fee, shall be adjusted to exclude any significant sums by which Clemson University finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between parties.

(3) Cost or Pricing Data Not Required. Unless otherwise required by Clemson University, the requirements of this section shall not apply to contracts:

(a) where the contract price is based on adequate price competition;

(b) where the contract price is based on established catalog prices or market prices;

(c) where contract prices are set by law or regulations; or

(d) where it is determined in writing in accordance with regulations promulgated by Clemson University 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 Clemson University may be used, except that the use of a cost-plus-a-percentage-of-cost contract shall be approved by the Chief Procurement Officer. 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 Clemson University than any other type or that it is impracticable to obtain the supplies, services or construction required except under such a contract.

(2) Clemson University shall use a form of contract which they determine is in their best interest.

**SECTION 2020.** Approval of accounting system.

The chief procurement officer, the head of a purchasing agency, or a designee of either officer may require that:

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

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

**SECTION 11-35-2030.** 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 by regulation; 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 therefore.

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

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

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

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

MAY 4, 2004

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

(4) The maximum time for any multi-term contract is five years. Contract terms of up to seven years may be approved by the President of Clemson University. Contracts exceeding seven years must be approved by Clemson University's Board of Trustees.

**SUBARTICLE 11**

**INSPECTION OF PLANT AND AUDIT OF RECORDS**

**SECTION 2210. Right to inspect plant.**

Clemson University shall be authorized, at reasonable times, to inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by Clemson University.

**SECTION 2220. Right to audit records.**

(1) Audit of Cost or Pricing Data. All Clemson University 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 to the extent that such books and records relate to such cost or pricing data. The contract shall further set forth that the contractor or subcontractor who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the chief procurement officer; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the chief procurement officer.

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

**SUBARTICLE 13**

**DETERMINATIONS AND REPORTS**

**SECTION 2410. Finality of determinations.**

The determinations required by Section 1520(7) (Competitive Sealed Bidding: Correction or Withdrawal of Bids; Cancellation of Awards), Section 1520(11) (Competitive Sealed Bidding: Prequalification, Section 1530(1) (Competitive Sealed Proposals, Conditions for Use), Section 1530(4) (Competitive Sealed Proposals: Prequalification), Section 1530(8) (Competitive Sealed Proposals: Negotiations), Section 1530(7) (Competitive Sealed Proposals, Selection and Ranking of Prospective Offerors), Section 1530(9) (Competitive Sealed Proposals Award), Section 1540 (Negotiations After Unsuccessful Competitive Sealed Bidding), Section 1560 (Sole Source Procurement), Section 1570 (Emergency Procurement), Section 1810(2) (Responsibility of Bidders and Offerors, Determination of Nonresponsibility), Section 1830(3) (Cost or Pricing Data, Cost or Pricing Data

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

MAY 4, 2004

Not Required), Section 2010 (Types and Forms of Contracts), Section 2020 (Approval of Accounting System), Section 2030(2) (Multi-Term Contracts, Determination Prior to Use), and Section 3220(5) (Procurement Procedure, Selection and Ranking of the Three Most Qualified) shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. The chief procurement officers or their 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 any employee of Clemson University, 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 Clemson University policies and procedures.

**SECTION 2440.** Records of procurement actions.

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

(a) each contractor's name;

(b) the amount and type of each contract;

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

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

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

**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**

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**  
**MAY 4, 2004**

**SECTION 2730.** Assuring competition.

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

**SECTION 2750.** Specifications prepared by architects and engineers.

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

**ARTICLE 9.**

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

**SUBARTICLE 1.**

**DEFINITIONS**

**SECTION 2910.** Definitions of terms used in this article.

(1) "Architect-engineer and land surveying services" are those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture, and interior design pertaining to construction, as defined by Clemson University, 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 Clemson University 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 Clemson University 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.** Construction contracting administration.

(1) Selection of Method. The method of construction contracting administration used for a construction project by Clemson University shall be determined to be that method which is most advantageous to Clemson University and will result in the most timely, economical, and successful completion of the construction project. Clemson University shall select in accordance with the procurement regulations the appropriate method of construction contracting administration for a particular project and shall state in writing the facts and



**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

MAY 4, 2004

|   |
|---|
| considerations which led to the selection of that particular method.  |
| <b>SECTION 3020.</b> Construction procurement procedures.   |
| (1) Source Selection. All Clemson University construction contracts shall be awarded pursuant to the procedures set forth in either Section 1520 or Section 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. The using agency's solicitation shall set forth all requirements of the solicitation including, but not limited to:   |
| (i) Clemson University, 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, Clemson University, 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 code. Any bidder in response to a solicitation shall set forth in his bid the name of only those subcontractors that will perform the work as identified in the solicitation. 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 the using agency for good cause shown. |
| (ii) Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive.  |
| (iii) No prime contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except for one or more of the following reasons:   |
| (a) upon a showing satisfactory to Clemson University by the contractor that a subcontractor who was listed is not financially responsible;   |
| (b) upon a showing satisfactory to Clemson University by the contractor that the scope of work bid by a listed subcontractor did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the listed subcontractor's original bid;   |
| (c) upon a showing satisfactory to Clemson University made by the contractor within four working days of the bid opening that the subcontractor was listed as a result of an inadvertent clerical error;  |
| (d) upon a showing satisfactory to Clemson University by the contractor that the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prime contractor after the subcontractor had represented to the prime contractor that he could obtain a performance and payment bond;  |
| (e) upon a showing satisfactory to Clemson University by the contractor that the listed subcontractor is required to be licensed and does not have the license by the time it is required by law;   |
| (f) when the listed subcontractor fails or refuses to perform his subcontract;  |
| (g) when the work of the listed subcontractor is found by Clemson University to be substantially unsatisfactory;  |
| (h) upon mutual agreement of the contractor and subcontractor;  |
| (i) with the consent of Clemson University for good cause shown.  |
| The request for substitution must be made to Clemson University in writing. This written request does not give rise to any private right of action against the prime contractor in the absence of actual malice.  |
| (iv) Where substitution is allowed, the prime contractor, before obtaining prices from any other subcontractor, must attempt in good faith to negotiate a subcontract with at least one subcontractor whose bid was received prior to the submission of the prime contractor's bid. Nothing in this section affects a contractor's ability to request withdrawal of a bid in accordance with the provisions of this code and the regulations promulgated under it.  |

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

MAY 4, 2004

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

(c) Negotiations After Unsuccessful Competitive Sealed Bidding. In lieu of Section 1540, the following provisions apply:

(1) When bids received pursuant to an invitation for bids conducted pursuant to Section 1520 exceed available funds and it is determined in writing by the agency that circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder, provided that this base bid, less any deductive alternates, does not exceed available funds by an amount greater than ten percent of the construction budget established for that portion of the work. The using agency 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 fifteen percent without the written approval of the chief procurement officer based on the best interest of Clemson University.

**SECTION 3025. Approval of architectural, engineering or construction changes.**

Clemson University shall be allowed to approve and pay for amendments to architectural/engineering contracts and change orders to construction contracts which do not alter the original scope or intent of the project, and which do not exceed the previously approved project budget.

**SECTION 3030. Bond and security.**

In all cases involving bonding and security, the requirement shall be left to the discretion of the President of Clemson University.

**SECTION 3060. Fiscal responsibility**

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

**SUBARTICLE 5.**

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

**SECTION 3210. Applicability and policy.**

It is the policy of Clemson University 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. Clemson University shall establish its own architect-engineer, construction management, and land surveying services selection committee hereinafter referred to as the selection committee, which shall be composed of those individuals whom the president of Clemson University determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The president of Clemson University or his qualified responsible designee shall sit as a permanent member of the selection committee for the purpose of coordinating and accounting for the committee's work

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

MAY 4, 2004

|  |
|--|
| (2) Advertisement of Project Description. The selection committee shall be responsible for:  |
| (a) developing a description of the proposed project,  |
| (b) enumerating all required professional services for that project, and   |
| (c) preparing a formal invitation to firms for submission of information.  |
| The invitation shall include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, the submission deadline, and how interested firms may apply for consideration. The invitation shall be formally advertised in South Carolina Business Opportunities.  |
| (3) Response to Invitation. The date for submission of information from interested persons or firms in response to an invitation shall be not less than fifteen days after publication of the invitation. Interested architect-engineer, construction management, and land surveying persons or firms shall be required to respond to the invitation with the submission of information which the invitation requires.   |
| (4) Interviews with Interested Firms. Following receipt of information from all interested persons and firms, the selection committee shall hold interviews with at least three persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews. A list of firms selected for interview shall be sent to all firms that submitted information in response to the advertisement, prior to the date selected for the interviews. If less than three persons or firms have responded to the advertisement, the committee shall hold interviews with those that did respond. The selection committee's determination as to which will be interviewed shall be in writing and shall be based upon its review and evaluation of all submitted materials. The written report of the committee shall specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. The purpose of the interviews shall be to provide such further information as may be required by the selection committee to fully acquaint itself with the relative qualifications of the several interested firms. |
| (5) Selection and Ranking of the Three Most Qualified. The agency selection committee shall evaluate each of the persons or firms interviewed in view of their:  |
| (a) past performance;  |
| (b) the ability of professional personnel;   |
| (c) demonstrated ability to meet time and budget requirements;   |
| (d) location;  |
| (e) recent, current, and projected workloads of the firms;   |
| (f) creativity and insight related to the project;   |
| (g) related experience on similar projects; and  |
| (h) 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.  |
| (6) 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 Clemson University. 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 agency selection committee, and negotiations shall be continued in the same manner until agreement is reached.  |
| (7) Award. Once a contract has been successfully negotiated in accordance with Section 3020(6), notification of award a contract shall be sent to all firms responding to the invitation.  |

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

**MAY 4, 2004**

**SECTION 3230.** Exception for small architect-engineer and land surveying services contract.

(1) Procurement Procedures for Certain Contracts. Clemson University securing architect-engineer or land surveying service which is estimated not to exceed twenty-five thousand dollars 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 Clemson University for professional services performed by any one architectural-engineering or land surveying firm pursuant to Section 3230(1) shall not exceed seventy-five thousand dollars. All persons or firms seeking to render professional services pursuant to this section shall furnish Clemson University with whom the firm is negotiating a list of professional services, including fees paid therefore, performed for Clemson University during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.

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

**ARTICLE 10.**

**INDEFINITE DELIVERY CONTRACTS**

**SECTION 3310.** Indefinite delivery contracts for construction items, architectural-engineering and land surveying services.

(1) General Applicability. Indefinite delivery contracts may be awarded on an as-needed basis for construction services pursuant to the procedures set forth in Section 3020 and for architectural-engineering and land surveying services pursuant to Section 3220.

(a) Construction Services. When construction services contracts are awarded, each contract shall be limited to a total expenditure of two million dollars for a three-year period with individual project expenditures not to exceed five hundred thousand dollars.

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

(2) Small Indefinite Delivery Contracts. Small indefinite delivery contracts for architectural-engineering and land surveying services may be procured as provided in Section 3230. A contract established under this section shall be subject to and included in the limitations for individual and total contract amounts provided in Section 3230, and any regulations promulgated thereunder.

**ARTICLE 15**

**SUPPLY MANAGEMENT**

**SUBARTICLE 3**

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**  
MAY 4, 2004

|  |
|--|
|  |
| REGULATIONS FOR DISPOSAL   |
|  |
| <b>SECTION 3810.</b> Regulations for disposal  |
|  |
| The disposal of personal property by Clemson University is governed by Title 11, Chapter 35 of the South Carolina Code of Laws.  |
|  |
| ARTICLE 17.  |
|  |
| LEGAL AND CONTRACTUAL REMEDIES   |
|  |
| SUBARTICLE 1.  |
|  |
| ADMINISTRATIVE RESOLUTION OF CONTROVERSIES   |
|  |
| <b>SECTION 4210.</b> 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 procurement officer in the manner stated in subsection (2)(a) 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 Request for Proposals or other solicitation document, not including any amendment thereto, is deemed to have been issued on the date any 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 the appropriate chief procurement officer in the manner stated in subsection (2)(b) below within five days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; provided that any matter which could have been raised under subparagraph (a) above as a protest of the solicitation may not be raised as a protest of the intended award or award of a contract.  |
| (c) The rights and remedies granted in this article to bidders, offerors, contractors, or subcontractors, either actual or prospective, are to the exclusion of all other rights and remedies of such bidders, offerors, contractors, or subcontractors against Clemson University for the loss or potential loss of an award of a contract under the this code and regulations.   |
| (d) The rights and remedies granted by subsection (1) above and section 4410 are not available for contracts with an actual or potential value of up to one hundred thousand dollars.  |
| (2) Protest Procedure. (a) A protest under subsection (1)(a) above shall be in writing, filed with the appropriate chief procurement officer, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. A protest must be received by the appropriate chief procurement officer within the time limits established by subsection (1) above.  |
| (b) A protest under subsection (1)(b) above shall be in writing and must be received by the appropriate chief procurement officer within the time limits established by subsection (1)(b) above. At any time after filing a protest, but no later than ten days after the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code, a protestant may amend a protest that was first submitted within the time limits established by subsection (1)(b) above. A protest, including any amendments, shall set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.                                      |
| (3) Duty and Authority to Attempt to Settle Protests. Prior to commencement of an administrative review as   |

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

**MAY 4, 2004**

provided in subsection (4), the chief procurement officer 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 procurement officer shall have the authority to approve any settlement reached by mutual agreement.

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

(5) Notice of Decision. A copy of the decision under subsection (4) of this section along with a statement of appeal rights under Section 4210(6) shall be mailed or otherwise furnished immediately to the protestant and any other party intervening. The chief procurement officer shall also post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and such posted decision shall indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section 4210(6).

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

(7) Automatic Stay of Procurement During Protests. In the event of a timely protest under subsection (1) above, Clemson University shall not proceed further with the solicitation or award of the contract until a decision is rendered by the appropriate chief procurement officer.

(8) Notice of CPO Address. Notice of the chief procurement officer's address shall be included in every notice of an intended award and in every invitation for bids, request for proposals, or other solicitation documents.

**SECTION 4220. Authority to debar or suspend.**

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

**SECTION 4230. Alternative Dispute Resolution**

As a condition of receiving the award of a contract, Clemson University 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 procurement officer or the Procurement Review Panel, upon administrative review, that a solicitation or award of a contract is in violation of the law including but not limited to this code and the accompanying regulation. The remedies set

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**

MAY 4, 2004

forth herein may be granted by either the chief procurement officer after review under Section 4210 or by the Procurement Review Panel after review under Section 11-35-4410(1) of the South Carolina Code of Laws.

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

(a) canceled;

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

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

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

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

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

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

**SECTION 4330. Frivolous protests.**

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

(2) Sanctions for Violations. If a request for review, protest, pleading, motion, or other document that is filed with a chief procurement officer or the Procurement Review Panel is signed in violation of this subsection, 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.

(3) Filing. Any motion regarding a matter that is not otherwise before the Panel may not be filed until after a final decision has been issued by the chief procurement officer. A motion for sanctions pursuant to this section shall be filed with the Panel no later than 15 days after the later of either (a) the filing of a request for review, protest, motion, or other document signed in violation of this section, or (b) the issuance of an order that addresses the request for review, protest, motion, or other document that is the subject of the motion for sanctions.

**SUBARTICLE 3**

**REVIEW PANEL**

**SECTION 4410. Procurement Review Panel.**

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

**ARTICLE 19**

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**  
**MAY 4, 2004**

|   |
|---|
| INTERGOVERNMENTAL RELATIONS   |
|   |
| SUBARTICLE 1  |
|   |
| APPLICATION   |
|   |
| <b>SECTION 4610. Application</b>  |
|   |
| Clemson University is governed by Article 19, Title 11, Chapter 35 of the South Carolina Code of Laws.  |
|   |
| ARTICLE 21  |
|   |
| ASSISTANCE TO MINORITY BUSINESSES   |
|   |
| SUBARTICLE 3  |
|   |
| ASSISTANCE TO MINORITY BUSINESSES   |
|   |
| <b>SECTION 5210. Statement of policy and its implementation.</b>  |
|   |
| (1) Statement of Policy. Clemson University 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. Clemson University believes that it is in their best interest to assist minority-owned businesses to develop fully as a part of the policies and programs which are designed to promote balanced economic and community growth throughout the State. Clemson University, 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 Clemson University. Clemson University, therefore, takes this leadership role in setting procedures that will result in awarding contracts and subcontracts to minority business firms and will encourage all contractors and suppliers to use minorities in their procurements and in their choice of subcontractors, to enhance minority capital ownership, overall state economic development and reduce dependency on the part of minorities. |
| (2) Implementation. Chief procurement officers and their designees shall implement the policy set forth in subsection (1) of this section by actively seeking opportunities to involve minority businesses and using the qualification procedures referenced in this code in evaluating and choosing qualified contractors and suppliers in accordance with the provisions of Sections 20(i), 1520, 1523 and 1530.  |

**INDEX**

|   |
|---|
| <b>ARTICLE 1- GENERAL PROVISIONS</b>          |
| Section 10- Citation                          |
| Section 20-Purpose and policies               |
| Section 30- Obligation of good faith          |
| Section 40- Application of this code          |
| Section 45- Payment for supplies and services |
| Subarticle 3- Determinations                  |
| Section 210- Determinations                   |



**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**  
MAY 4, 2004

|  |
|--|
| Subarticle 5- Definitions of Terms Used In This Code                       |
| Section 310- Definitions   |
| Subarticle 7- Public Access To Procurement Information                     |
| Section 410 Public access to procurement information                       |
| ARTICLE 3- PROCUREMENT ORGANIZATION  |
| Subarticle 1- Committees and Management                                    |
| Section 540- Authority and duties of Clemson University                    |
| Subarticle 3- Exemptions   |
| Section 710- Exemptions  |
| Subarticle 5- Offices Created  |
| Section 840 Delegation of authority  |
| Subarticle 9- Auditing and Fiscal Reporting                                |
| Section 1210- Certification  |
| Section 1230- Auditing   |
| ARTICLE 5- SOURCE SELECTION AND CONTRACT FORMATION                         |
| Subarticle 1- Definitions  |
| Section 1410- Definitions of terms used in this article                    |
| Subarticle 3- Methods of Source Selection                                  |
| Section 1510- Methods of source selection                                  |
| Section 1520- Competitive sealed bidding                                   |
| Section 1523- Preferences  |
| Section 1530- Competitive sealed proposals                                 |
| Section 1540- Negotiations after unsuccessful competitive sealed bidding   |
| Section 1550- Bid procedures on procurements not exceeding \$100K          |
| Section 1560- Sole source procurement                                      |
| Section 1570- Emergency procurements                                       |
| Subarticle 5- Cancellation of Solicitations                                |
| Section 1710- Cancellation of invitation for bids or request for proposals |
| Subarticle 7- Responsibility of Bidders and Offerors                       |
| Section 1810- Responsibility of bidders and offerors                       |
| Section 1820- Prequalification of supplies and suppliers                   |
| Section 1830- Cost or pricing data   |
| Subarticle 9- Types and Forms of Contracts                                 |
| Section 2010- Types of contracts; contract forms                           |
| Section 2020- Approval of accounting system                                |
| Section 2030- Multi-term contracts   |
| Subarticle 11- Inspection of Plant and Audit of Records                    |
| Section 2210- Right to inspect plant                                       |
| Section 2220- Right to audit records                                       |
| Subarticle 13- Determinations and Reports                                  |
| Section 2410- Finality of determinations                                   |
| Section 2420- Reporting of anticompetitive practices                       |
| Section 2430- Retention of procurement records                             |
| Section 2440- Records of procurement actions                               |
| ARTICLE 7- SPECIFICATIONS  |
| Subarticle 1- Definitions  |
| Section 2610- Definitions of terms used in this article                    |
| Subarticle 3- Specifications   |

**CLEMSON UNIVERSITY PROCUREMENT CODE FOR ECONOMIC DEVELOPMENT INFRASTRUCTURE**  
**MAY 4, 2004**

|  |
|--|
| Section 2730- Assuring competition   |
| Section 2750- Specifications prepared by architects and engineers  |
| ARTICLE 9- CONSTRUCTION, ARCHITECT-ENGINEER, CONSTRUCTION MANAGEMENT, AND LAND SURVEYING SERVICES  |
| Subarticle 1- Definitions  |
| Section 2910- Definitions of terms used in this article  |
| Subarticle 3- Construction Services  |
| Section 3010- Construction contracting administration  |
| Section 3020- Construction procurement procedures  |
| Section 3025- Approval of architectural, engineering or construction changes   |
| Section 3030 Bond and security   |
| Section 3060- Fiscal responsibility  |
| Subarticle 5- Architect-Engineer, Construction Management, and Land Surveying Services   |
| Section 3210- Applicability and policy   |
| Section 3220- Procurement procedures   |
| Section 3230- Exception for small architect-engineer and land surveying services contract  |
| ARTICLE 10- INDEFINITE DELIVERY CONTRACTS  |
| Section 3310- Indefinite delivery contracts for construction items, architectural-engineering and land surveying services  |
| ARTICLE 15- SUPPLY MANAGEMENT  |
| Subarticle 3- Regulations for Disposal   |
| Section 3810- Regulations for disposal   |
| ARTICLE 17- LEGAL AND CONTRACTUAL REMEDIES   |
| Subarticle 1- Administrative Resolution of Controversies   |
| Section 4210- Right to protest; procedure; settlement of pretest; administrative review and decision; notice of decision; finality; stay of procurement pending; exclusivity of remedy |
| Section 4220- Authority to debar or suspend  |
| Section 4230- Alternate Dispute Resolution.  |
| Subarticle 2- Remedies   |
| Section 4310- Solicitations or awards in violation of the law  |
| Section 4330- Frivolous protests   |
| Subarticle 3- Review Panel   |
| Section 4410- Procurement review panel   |
| ARTICLE 19- INTERGOVERNMENTAL RELATIONS  |
| Subarticle 1- Application  |
| Section 4610- Application  |
| ARTICLE 21- ASSISTANCE TO MINORITY BUSINESSES  |
| Subarticle 3- Assistance to Minority Businesses  |
| Section 5210- Statement of policy and its implementation   |