CHAPTER 1
GENERAL INFORMATION

1.1 RELATED STATUTORY AUTHORITY

1.1.1 SC Code § 2-47-50 requires the State Fiscal Accountability Authority (SFAA) to establish permanent improvement projects prior to an Agency taking any action to implement the project or to expend any funds, except for advertising and interviewing for architectural and engineering services.

1.1.2 SC Code § 2-47-56 sets approval requirements for gifts-in-kind for architectural and engineering services and construction.

1.1.3 SC Code § 6-9-110 exempts state property from local ordinances that require permits, licenses or other devices as means of enforcing building standards.

1.1.4 SC Code § 6-9-110 provides for the training and certification of OSE staff as Deputy State Fire Marshals.

1.1.5 SC Code § 6-29-770 subjects state agencies, departments, and subdivisions to local zoning ordinances.

1.1.6 SC Code § 10-1-180 provides that all construction, improvement, and renovation of state buildings must comply with all applicable Building Code standards as specified in the Manual for Planning and Execution of State Permanent Improvements.

1.1.7 SC Code § 11-35-410 provides that any person may inspect or copy public records after an award, except as exempted by SC Code § 30-4-40. Normally a procurement file is considered a public record, except for that portion of the submittal which at the time of the submission was marked as confidential.

1.1.8 SC Code § 11-35-510 vests all rights, powers, duties, and authority relating to centralization of materials management with the Chief Procurement Officers. This section transfers this authority from all other governmental bodies to the Chief Procurement Officers, regardless of the source of funds. This authority is subject to specific listed exceptions.

1.1.9 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.

1.1.10 SC Code § 11-35-710 provides that SFAA may exempt specific purchases from the Procurement Code.

1.1.11 SC Code §§ 11-35-810, 820, and 830 create respectively the Office of Materials Management, the Office of Information Technology Management, and the Office of State Engineer.

1.1.12 SC Code §§ 11-35-1520, 1530 and 3020 requires that procurements of construction services valued at more than $100,000 be advertised in “South Carolina Business Opportunities”.

1.1.13 SC Code § 11-35-4210 provides protest rights to certain individuals and permits the Chief Procurement Officer to attempt to resolve protested solicitations and awards.

1.1.14 SC Code § 11-35-4220 permits the Chief Procurement Officer to suspend or debar a person or firm from consideration for award of contracts.

1.1.15 SC Code § 11-35-4230 permits the Chief Procurement Officer to attempt to resolve contract and breach of contract controversies.

1.1.16 SC Code § 11-35-4410 establishes the South Carolina Procurement Review Panel as the final administrative review for all decisions by the Chief Procurement Officers.

1.1.17 SC Regulation 19-445.2010 requires that when an Agency receives a written request for procurement information from an actual Offeror prior to contract award (after bid opening but before end of protest period), the Agency must make such information (excluding confidential and exempt information), available for inspection within 10 days.

1.1.18 SC Regulation 19-445.2015 sets forth the procedure for termination or ratification of unauthorized procurements.

1.1.19 SC Regulation 19-446 sets the requirements for persons representing clients in contract disputes and other proceedings before the Chief Procurement Officer for Construction.

1.2 ROLE OF THE STATE ENGINEER AND OFFICE OF THE STATE ENGINEER (OSE)

The State Engineer and OSE's primary role is to assist the Agency to procure design and construction in the manner best suited to the Agency's needs. The State Engineer is responsible to assure that all such procurements comply with state law. The State Engineer, as the Building Official and Deputy State Fire Marshal for construction of state buildings and facilities, is responsible to assure all such construction provides a safe environment for all occupants. Finally, the State Engineer serves as the administrator of the State-level Floodplain Management Program for State lands.

1.3 PURPOSE OF THIS MANUAL

1.3.1 The SC Consolidated Procurement Code and other Statutory Provisions require OSE to prepare and maintain the Manual for Planning & Execution of State Permanent Improvements. According to Section 11-35-830, all procurements involving construction and construction-related design services, including any pre- and post-procurement activities in this area, must be conducted in accordance with the Manual for Planning and Execution of State Permanent Improvements. As provided by SC Regulation 19-445.2145(F), this Manual is the responsibility of the Office of the State Engineer. In his sole discretion, the State Engineer reserves the right to excuse compliance with part or all of this Manual (except where it simply restates the law). Any such authority will be in writing and will be provided only in very limited circumstances.

1.3.2 While OSE has prepared this Manual to comply with the law, OSE hopes agencies will view this Manual as an aid in the construction process. This Manual, we believe, will provide the Agency with an understanding of the requirements of state procurement law, assistance in procuring design and construction services in compliance with that law, assistance with complying with state law regarding building codes, and assistance with managing their construction projects. The Manual is posted on OSE's website at http://procurement.sc.gov/manual.

1.4 ORGANIZATION

1.4.1 OSE has organized this Manual to flow as closely as possible in the order of the construction process; however, the order and title of Chapters is not intended to emphasize one project delivery method over another. As indicated in Chapter 3, the nature of a project will control which project delivery method is best for that project.

1.4.2 Each chapter provides assistance with various stages of the construction project and the Appendices provide additional information such as contracts and forms referenced in the Manual.

1.5 KEY DEFINITIONS

1.5.1 "Construction" is the process of building, altering, repairing, remodeling, improving, or demolishing any structure, building, or other improvements of any kind on any public real property. It does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property. SC Code § 11-35-310(7)

1.5.2 "Agency" is the "Governmental Body" procuring design or construction.

1.5.3 "Governmental Body" is a state government department, commission, council, board, bureau, committee, institution, public college, university, technical school, Agency, government corporation, or other establishment or official of the executive or judicial branch. SC Code § 11-35-310(18)

1.5.4 "Day" refers to a Calendar Day, unless specifically noted otherwise.

1.5.5 "Business Day" means a day that is neither a Saturday, Sunday, nor a state or federal holiday and runs midnight to midnight.

1.6 AGENCY RESPONSIBILITIES

1.6.1 Each Agency is responsible for its construction contracting program.

1.6.2 The Agency must determine the need for design or construction services; secure project funding and comply with State and Federal laws, regulations, and procedures in procuring and administering construction.

1.7 GENERAL PROCUREMENT INFORMATION

1.7.1 Chief Procurement Officers – Authority and Delegation of Authority

A. South Carolina Law establishes three Chief Procurement Officers, the State Engineer (SE), the Materials Management Officer (MMO), and the Information Technology Management Officer (ITMO). Collectively, the Chief Procurement Officers have the authority and responsibility for all state procurement. The only exceptions are when the General Assembly or SFAA exempts or otherwise transfers specific authority to others.

B. Procurement responsibilities of the Chief Procurement Officers are as follows:

CATEGORY	SE	MMO	ITMO
1. Construction-Related Professional Services	X		
2. Construction, over Agency Certification	X		
3. Maintenance & Repair, greater than $50,000 and over Agency Certification	X		
4. Operation, over Agency Certification		X	
5. Goods and Services, over Agency Certification		X	
6. Data Processing, over Agency Certification			X
7. Telecommunications, over Agency Certification			X
8. Office System Technology, over Agency Certification			X
9. Information Technology Services, over Agency Certification			X

C. Each Agency has the authority to conduct construction procurements up to and including $50,000. Such procurements are subject to the requirements of the Procurement Code and applicable requirements of this Manual. SFAA may grant an Agency a higher construction certification limit as discussed in Chapter 13.

D. Upon the recommendation of the Division of Procurement Services (DPS), SFAA may exempt governmental bodies from purchasing certain items through the respective chief procurement officer's area of responsibility. Audit and Certification maintains current listings of all exemptions and certifications, which are available through the DPS website, https://procurement.sc.gov/audit .

1.7.2 Advertising of Design and Construction Procurements

A. Chapters 4 and 6 describe the minimum requirements for advertising procurements for professional services and construction. The Agency must publish all advertisements required by this Manual in South Carolina Business Opportunities (SCBO). The Division of Procurement Services publishes SCBO. To improve competition, Agencies may also advertise in other media, but such advertisements are not legal advertisements that meet the public notice requirements of the Procurement Code.

B. SCBO is available on the Division of Procurement Services website (https://scbo.sc.gov/online-edition). SCBO is published daily Monday – Friday. Projects advertised in SCBO will remain online from the date of posting until the bid date or the submittal deadline.

1.7.3 Permanent Improvement Project

A. Agencies should direct questions on procedures related to the PIP process to the Capital Budget Office in the Executive Budget Office of the Department of Administration.

B. For the definition of a Permanent Improvement Project (PIP), Agencies should consult the Policies and Guidance for Establishment and Maintenance of Permanent Improvement Projects manual, which is available through the website, Policies and Guidance for Establishment of Permanent Improvement Projects Manual. The Policies and Guidance manual defines the process for establishing a PIP. SFAA documents its approval of a PIP on a Form A-1. Form A-1 is available on the Forms and Instructions section of the Capital Budget Office website, Form A-1.

C. An Agency may not implement a PIP until SFAA has approved a Form A-1. However, if the Agency expects a project to result in a PIP, the Agency may advertise (using a temporary project number assigned by OSE), interview for architectural and engineering (A/E) services, and negotiate a proposed contract before SFAA approval of a Form A-1. The Agency may not award a contract for A/E services on a PIP and the A/E may not perform any work until SFAA approves a Form A-1.

1.7.4 Non-Permanent Improvement Project

A Non-Permanent Improvement Project (Non-PIP) is a construction project that does not meet the definition of a PIP. If an Agency begins a construction project that does not meet the PIP definition, but it subsequently qualifies as a PIP, the Agency must seek to establish the project as a PIP by submitting a Form A-1 to the Capital Budget Office as soon as they know that the project qualifies as a PIP. OSE cannot approve any subsequent forms related to the project until the PIP has been established.

1.7.5 Project Numbering

A. OSE gives each project under its jurisdiction a unique project number. The Agency needs to assure that this number appears on all documents and correspondence associated with the project. OSE's project number format is as follows:

1. Permanent Improvement Project Number (PIP)

H59	**9659**	**PD**	**B1**
Agency Number	PIP Number (assigned by Capital Budgeting)	OSE PM (assigned by OSE)	Project Phase (optional)

2. Non-Permanent Improvement Project Number (Non-PIP)

H12	**N046**	**MJ**	**C**
Agency Number	Non-PIP Number (assigned by OSE)	OSE PM (assigned by OSE)	Project Phase (optional)

3. Indefinite Quantity Contract Project Number (IDQ)

H75	**P015**	**SG**	**A**
Agency Number	IDQ Number (assigned by OSE)	OSE PM (assigned by OSE)	Multiple Contract Award Identification (if needed)

4. Task Order Contract Project Number (TOC)

H75	**C015**	**SG**	**A**
Agency Number	TOC Number (assigned by OSE)	OSE PM (assigned by OSE)	Multiple Contract Award Identification

B. OSE uses Project Phases (up to two alphanumeric characters) to identify smaller elements of a large project when an Agency plans to award separate design and/or construction contracts for those smaller elements. (Note: If a PIP that exceeds the Agency construction certification is split into smaller projects, each smaller project must be submitted to OSE for review and approval.)

1.7.6 Types of Construction Procurements

The Procurement Code allows the following methods of construction procurement:

A. Qualification based selection of architect-engineer and land surveying services - Chapter 4.

B. Competitive Sealed Bidding - Chapter 6.

C. Competitive Sealed Proposals - Chapter 11 or 12, depending on project delivery method.

D. Small Procurements - Chapter 8.

E. Emergency Procurements - Chapter 8.

F. Sole Source Procurements - Chapter 8.

1.7.7 Types of Project Delivery Methods

A. Design-Bid-Build – SC Code § 11-35-2910(6) & Chapter 6.

B. Construction Management at Risk - SC Code § 11-35-2910(5) & Chapter 11.

C. Design-Build - SC Code § 11-35-2910(7) & Chapter 12.

D. Design-Build-Operate-Maintain – SC Code § 11-35-2910(9) & Chapter 12.

E. Design-Build-Finance-Operate-Maintain – SC Code § 11-35-2910(8) & Chapter 12.

F. Operations and Maintenance - SC Code § 11-35-2910(13).

1.8 UNAUTHORIZED PROCUREMENTS

1.8.1 SFAA may prescribe administrative penalties for violations of the Procurement Code and Regulations. SFAA may revoke or reduce procurement authority for violation of these provisions.

1.8.2 Agencies must terminate contracts for procurements made in violation of the Procurement Code unless an authorized individual determines in writing that the contract is in the best interest of the state. See SC Regulation 19-455.2015 for details on terminating or ratifying such procurements.

1.9 RELATIONSHIP BETWEEN LOCAL OFFICIALS AND STATE AGENCIES

1.9.1 Local Ordinances and Regulations

Local ordinances or regulations that require the purchase or acquisition of a permit utilized to enforce building codes and standards do not apply to state construction projects. The State Engineer determines the enforcement and interpretation of all applicable building codes and standards on state buildings. Local officials may comment on the application of building codes to state buildings through the State Engineer but may not delay construction or delay or deny water, sewer, power or other utilities, or firefighting services.

1.9.2 State Fire Marshal

Certified Personnel of OSE and deputy state fire marshals (including resident state fire marshals) have exclusive jurisdiction over state buildings in the exercise of the State Fire Marshal's powers and jurisdictional authority.

1.9.3 Local Zoning Ordinances

State agencies are subject to local zoning ordinances. However, local zoning ordinances do not apply to homes serving nine or fewer mentally or physically handicapped persons that provide care on a twenty-four-hour basis and provide a binding procedure for working with local government authorities to select a site for such homes.

1.10 FREEDOM OF INFORMATION ACT AND TRADE SECRETS ACT

The following generally describes some of the applicable requirements of the Freedom of Information Act (FOIA), but is not a complete review of the requirements of either FOIA or the Trade Secrets Act.

1.10.1 Each Agency is responsible for its compliance with the FOIA and the South Carolina Trade Secrets Act. Each Agency is also responsible for the development and enforcement of internal policies and procedures to ensure compliance.

1.10.2 Except as exempted by §30-4-40, any person may inspect or copy public records after an award. The following specifically applies to procurements:

- **A.** Normally, a public procurement file is a public record subject to public viewing.
- **B.** Until the Agency posts a Notice of Intent to Award, only the information disclosed by the Agency's procurement officer or his designee at the opening of sealed bids is public information.
- **C.** In the case of professional services procurements, the following becomes public information at the time the Agency posts a Notification of Selection for Contract Negotiation:
  - **1.** Information related to the Agency's determination of the firms selected for final interview.
  - **2.** Information related to the Agency's determination of the final ranking of the interviewed firms.
- **D.** Material not marked as confidential at the time of submittal is public information.
- **E.** Information relative to the identity of the maker of a gift to a public body must not be disclosed when the maker specifies, as a condition of the gift, that the public body not reveal their identity.
- **F.** The public body must separate records containing information that is exempt from disclosure before making the remaining information available to the public.

1.10.3 If an actual Offeror makes a written request for procurement information prior to the execution of a contract, the Agency must make documents directly related to the procurement activity that are not exempted available for inspection within 5 days of receiving the request. (SC Regulation 19 445.2010) In all other cases, if a person makes a written FOIA request to the Agency, the Agency must provide that person written notification as to public availability of the records within 10 days (excluding Saturday, Sundays and legal holidays) of receiving the request, except that if the requested record is more than 24 months old, the Agency has 20 days (excluding Saturday, Sundays and legal holidays).

1.10.4 Any person that violates the provisions of FOIA is guilty of a misdemeanor and subject to the penalties listed in C Code §30-4-110.

1.11 LEGAL REMEDIES FOR SOLICITATIONS AND AWARDS

When an Agency solicits a bid or proposal in excess of $50,000 or awards a contract in excess of $50,000, the procurement code provides aggrieved persons who have standing the right to protest.

1.11.1 Protesting a Contract Solicitation

A. Who can protest?

Any prospective Bidder, Offeror, Contractor, or Subcontractor may protest a contract solicitation.

B. What is the deadline for protesting?

Protestant must protest within fifteen days of the date of the Invitation for Bids, Request for Proposal, Solicitation, or Amendment, if the amendment is at issue. The State Engineer must receive the protest by midnight the end of the fifteenth day. If the fifteenth day falls on a weekend or a holiday, the State Engineer must receive the protest by midnight the end of the next business day.

C. How does someone submit a protest?

A protestant must submit a written protest to the State Engineer. Protestor may submit a protest by letter, facsimile, or e-mail to:

Mailing Address: State Engineer
1333 Main Street Suite 700
Columbia, SC 29201
Facsimile No.: 803-737-0639
E-mail Address: protest-ose@mmo.sc.gov

D. What information should the protestant provide in the written protest?

The protestor must:

1. Set forth the specific nature of the controversy
2. Set forth the specific relief requested; and
3. Provide sufficient details for the State Engineer and any other interested party to have notice of every issue the protestor wants the State Engineer to decide.

1.11.2 Protesting a Contract Award:

A. Who can protest?

Any actual Bidder, Offeror, Contractor, or Subcontractor may protest a contract award. Definitions of the words "Contractor" and "Subcontractor" are located at SC Code Ann § 11-35-310.

B. What is the deadline for protesting?

Protestant must provide the State Engineer with its written notice of intent to protest within seven business days of the date of posting of the Notice of Award/Intent Award. The State Engineer must receive the protest by midnight the end of the seventh business day. A protestant that timely provides a notice of intent to protest must perfect its protest by providing the State Engineer the grounds of protest and relief requested in writing before midnight the end of the fifteenth day after the posting of the Notice of Award/Intent to Award. If the date for the receipt of the notice of intent to protest or the date for the receipt of the perfected protest falls on a weekend or a holiday, the State Engineer must receive the protest by midnight the end of the next business day.

C. How does someone submit a protest?

See 1.11.1.C above.

D. What information should the protestant provide in the written protest?

See 1.11.1.D above.

1.11.3 Resolution Process for Protests

A. The Agency may first attempt to resolve all protests by agreement between the parties. OSE Project Managers are available to assist.

B. If the efforts at settlement fail to resolve the protest, the State Engineer will conduct an administrative review of the issues raised by the protestant and issue a written decision. The administrative review process may include a formal hearing.

C. Unless a person adversely affected by the State Engineer's decision files an appeal with the Procurement Review Panel, the Agency may award the contract on the eleventh day after the State Engineer posts his decision.

1.11.4 Appeals to the Procurement Review Panel

A. Any person adversely affected by the decision of the State Engineer may appeal that decision to the South Carolina Procurement Review Panel (Panel) within 10 days from the posting of the decision.

B. The appeal should be addresses to the State Engineer as set forth above. The appellant must submit with their appeal a filing fee of two hundred and fifty dollars ($250.00), payable to the SC Procurement Review Panel.

C. In order to prosecute an appeal before the Panel, the appellant must retain an attorney.

1.11.5 Stay of Procurement During Protests

When a prospective Bidder or Offeror protests a solicitation to the State Engineer, the Agency may not proceed with the procurement or enter into a contract until the protest is resolved; EXCEPT, the State Engineer, upon written request by the Agency Head, may determine in writing that it is necessary, and in the best interest of the State, to allow the contract award process to continue pending resolution of the protest.

1.12 LEGAL REMEDIES FOR CONTRACT CONTROVERSIES

1.12.1 General

A. In the event of a contract dispute between the Agency and one of its Contractors or Subcontractors, the Agency must first attempt to resolve the dispute without resort to further action. The OSE Project Managers are available to assist the Agency in resolving any dispute.

B. If the parties cannot resolve their dispute, either party may file a request for resolution of the dispute with the State Engineer. A party cannot seek redress in the courts without going through the following resolution process.

1.12.2 Filing a Request for Resolution of a Dispute or Controversy (Request for Resolution)

A. Who can file a request for resolution?

The contracting Agency, Contractor, or a Subcontractor, when the Subcontractor is the real party in interest, may file a written Request for Resolution of a contract controversy with the State Engineer. For the purposes of resolving contract controversies, the terms “Contractor” and “Subcontractor” include prime design professionals and their first-tier consultants.

B. What is the deadline for filing a request for resolution?

The requesting party must file their request within one year of the date the Contractor last performed work under the contract, unless the basis for the claim is a latent defect. In the case of claims for latent defects, the requesting party must file their request within three years of the date the requesting party knew or should have known of the defect that is the basis for the claim.

C. How does someone file a request for resolution?

The party filing must submit a written request for resolution to the State Engineer. The party may submit the request by letter, facsimile, or e-mail

Mailing Address: State Engineer
1333 Main Street Suite 700
Columbia, SC 29201

Facsimile No.: 803-737-0639

E-mail Address: protest-ose@mmo.sc.gov

D. What information should the party filing a request for resolution include in the request?

The requestor must:

1. Set forth the specific nature of the controversy;
2. Set forth the specific relief requested; and
3. Provide sufficient details for the State Engineer and any other interested party to have notice of every issue the protestor wants the State Engineer to decide.

1.12.3 Resolution Process for Contract Controversy

A. Mediation in accordance with the terms of the contract is the first step in the process of resolution of a contract controversy. An OSE Project Manager or other mutually agreeable party appointed by the State Engineer will act as the mediator. The parties involved in the controversy must participate in the mediation process.

B. In the event mediation fails to resolve all the issues in the contract controversy, the State Engineer will conduct an administrative review of the issues raised by the claimant and issue a written decision. The administrative review process may include a formal hearing where the parties have the opportunity to present evidence and testimony, cross-examine witnesses, and submit arguments to support their position. Legal representation is not required for a hearing before the State Engineer.

C. Each party must supply all proposed exhibits and related information at the administrative hearing along with sufficient copies for all other parties. The State Engineer may direct the parties to exchange exhibit information and witness lists before the hearing.

D. Each party must furnish sufficient evidence and witnesses to substantiate its claim. Unsupported testimony from the claimant is not sufficient to establish the amount of an award for a requested claim. If the respondent believes the value of a claim is unreasonable, then respondent must present evidence or witnesses to substantiate a different value for the claim.

1.12.4 Appeals to the Procurement Review Panel

A. Any person adversely affected by the decision of the State Engineer may appeal that decision to the South Carolina Procurement Review Panel (Panel) within 10 days from the posting of the decision.

B. The appellant should address the appeal to the State Engineer as set forth above. The appellant must submit with their appeal a filing fee of two hundred and fifty dollars ($250.00), payable to the SC Procurement Review Panel.

C. In order to prosecute an appeal before the Panel, the appellant must retain an attorney.