

**PROCUREMENT REGULATION
for
ANDERSON REGIONAL JOINT WATER SYSTEM**

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REGULATION NO. 02-01
OF THE
ANDERSON REGIONAL JOINT WATER SYSTEM
FOR THE ESTABLISHMENT OF PROCUREMENT PROCEDURES AND POLICIES

Findings:

The Commissioners of the ANDERSON REGIONAL JOINT WATER SYSTEM ("ARJWS") make the following findings: that there is a need to establish the procurement procedures of the ARJWS to provide comprehensive procurement practices; that proper use of the procurement regulations will provide increased economy, foster fair competitiveness and give safeguards to assure quality; and that the attached procedures embody sound principles of competitive procurement.

Where applicable, reference may be had to the South Carolina Consolidated Procurement Code, regulations and interpretations thereunder. Although not binding upon the ARJWS, these may give guidance.

ARTICLE I - GENERAL PROVISIONS

A - Purpose and Application

1-101 Purpose.

This Regulation is to provide for equitable treatment in purchasing, to maximize purchasing value and to provide safeguards for maintaining quality and integrity in compliance with S. C. Code Ann. §11-35-50.

1-102 Application.

This Regulation applies to contracts for the procurement of supplies, services (except professional services), and construction entered into by the ARJWS after the effective date of this Regulation. It shall apply to every expenditure of public funds irrespective of their source. Nothing in this Regulation shall prevent the ARJWS from complying with the terms and conditions of any grant, gift, or bequest which are otherwise consistent with law.

1-103 Specific Repealer.

All previously issued Resolutions, Rules, or Regulations pertaining to public procurement for the ARJWS are repealed.

1-104 Effective Date

This Regulation shall become effective at 12:01 A.M. on September 11,2002.

B - Definitions

1-201 Definitions. The following words, unless the context, custom or intent clearly indicates otherwise, shall mean:

- (1) "**ARJWS**" means ANDERSON REGIONAL JOINT WATER SYSTEM.
- (2) "**Business**" means any corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture or any other legal entity.
- (3) "**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.
- (4) "**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 public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property. "**Construction Management**" services means those professional services associated with a system in which the using agency 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 project in a manner that contributes to the control of time, cost, and quality of construction as specified in the construction management contract.
- (5) "**Contract**" means all types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.
- (6) "**Contract modification**" means a written order signed by the Administrative Manager or his designee directing the contractor to make changes in their services or construction.
- (7) "**Contractor**" means any person or business entity having a contract with the ARJWS.
- (8) "**Data**" means recorded information, regardless of form.
- (9) "**Days**" means calendar days in computing any period of time prescribed by this Regulation. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the ARJWS, then the period shall run to the end of the next business day. In computing any period of time prescribed by this regulation, the day of the event from which the designated period of time begins to run is not included.
- (10) "**Debarment**" means the disqualification of a person or business entity to receive invitations for bids, or requests for proposals, or the award of a contract by the ARJWS, for a specified period of time.
- (11) "**Designee**" means a duly authorized representative of the Administrative Manager with formal responsibilities under the regulations.
- (12) "**Employee**" means an individual drawing salary or wages from the ARJWS, whether elected or not, and any nonsalaried individual performing personal services for the ARJWS but not independent contractors.
- (13) "**Grant**" means the furnishing of assistance, whether financial or otherwise, to any person to

support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.

(14) **"Information Technology (IT)"** means data processing, telecommunications and office systems technologies and services:

(a) **"data processing"** means the automated collection, storage, manipulation and retrieval of data and equipment such as terminals, document scanners, word processors, intelligent copiers, offline memory storage and printing systems, data transmission equipment; and related software such as operating systems, library and maintenance routines and application programs.

(b) **"telecommunications"** means voice, data, message and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.

(c) **"office systems technology"** means office equipment such as typewriters, duplicating and photocopy machines, paper forms and records; microfilm and microfiche equipment and printing equipment and services.

(d) **"services"** means the providing of consultant assistance for any aspect of information technology, systems, and networks.

(15) **"Invitation for Bids"** means a written or published solicitation issued by the Procurement Officer for bids to contract for the procurement or disposal of supplies, services or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

(16) **"May"** denotes the permissive.

(17) **"Person"** means any business, individual, union, committee, club, other organization, or group of individuals.

(18) **"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.

(19) **"Procurement Officer"** means an individual designated by the Administrative Manager to serve as the procurement official for the ARJWS.

(20) **"Real property"** means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

(21) **"Request for Proposals (RFP)"** means a written or published solicitation issued by Procurement Officer for proposals to provide supplies or services, which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the ARJWS. The award of the contract must be made on the basis of evaluation factors which must be stated in the RFP,

and which must include but not be controlled alone by the factor of price proposed to be charged.

(22) **"Responsible Bidder"** has that definition found in Section 3-202(17).

(23) **"Responsive Bidder"** has that definition found in Section 3-202(16).

(24) **"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. This term does not include employment agreements or services as defined in Section 1-201 (14) (d).

(25) **"Shall"** denotes the imperative.

(26) **"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 the ARJWS.

(27) **"Supplies"** means all personal property, including but not limited to equipment, materials, printing, insurance, and leases of real property but not real property or an interest in real property other than a leasehold.

(28) **"Suspension"** means the disqualification of a person, contractor or contract by the ARJWS for an appropriate period of time or while an investigation may be in process to clarify any criminal, fraudulent, or improper conduct, failure or inadequacy of performance which may lead to debarment.

(29) **"Term contract"** means a contract established by the Procurement Officer for a specific product or service for a specified time.

(§11-35-310)

C - Public Access to Information

1-301 Public Access to Procurement Information.

Procurement information shall be a public record to the extent required by Chapter 3 of Title 50 of the South Carolina Code of Laws, 1976, as amended, (The Freedom of Information Act) with the exception that commercial, ~~or~~ financial or proprietary information obtained in response to a "Request for Proposal" or information that is privileged and confidential need not be disclosed.

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;

Credit or financial information.

“Privileged and confidential” information is information not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. Information and data on a user obtained from reports, questionnaires, discharge applications and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the Administrative Manager that the release of such information would divulge information, processes or methods of production entitled to protection as privileged and confidential information or as trade secrets of the user. When requested by the person furnishing the report, and approved by the Administrative Manager, the portions of a report which might disclose such shall not be made available for inspection by the public. It shall, however, be made available upon written request to governmental agencies for uses related to this Regulation, the NPDES Permit, or other uses determined appropriate by the Administrative Manager. The information shall be available for use by the ARJWS in judicial review or enforcement proceedings involving the person furnishing the information. Water constituents and characteristics shall not be recognized as confidential information.

Evaluative documents pre-decisional 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 pre-decisional deliberations. At the time of submitting a proposal or bid, the party supplying a bid or proposal must identify any portions of the proposal or bid considered by the party to be a trade secret and thus eligible to be withheld from public inspection and copying. If the information identified by the party is a trade secret, as defined in S. C. Code Section 30-4-40(a)(1), it may be withheld from public inspection and copying. If the party fails to identify information as a trade secret, the entire bid or proposal is to be made available for public inspection and copying. (§11-35-410)

D - Compliance with Federal Requirements

1-302 Compliance with Federal Requirements.

Where a procurement involves the expenditure of federal assistance or contract funds, the ARJWS shall comply with such federal law, regulations or grant conditions which are mandatory even though such requirements are not presently reflected in this Regulation.

ARTICLE II - PROCUREMENT ORGANIZATION

A - Responsibility for Procurement Regulation

2-101 Establishment, Appointment and Tenure

The Procurement Officer will be appointed by the Administrative Manager and will serve

at the will of the Administrative Manager.

2-102 ARJWS and Duties.

(1) Procurement Officer. The Procurement Officer or such other person designated by the Administrative Manager shall serve as the procurement official of the ARJWS.

(2) Duties. The Procurement Officer shall have the duties assigned to him by the Administrative Manager, which may include directing the Procurement officer to:

- (a) procure or supervise the procurement of all supplies, services, and construction needed by the ARJWS;
- (b) exercise general management supervision, control and disposal of all inventories and supplies belonging to the ARJWS;
- (c) sell, trade, or otherwise dispose of surplus supplies belonging to the ARJWS upon Board approval, and
- (d) establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and construction.

2-103 Authorizations and Signatures.

Purchase requisitions and orders up to One Thousand Dollars (\$1,000.00) will be authorized by those staff designated by their manager. Purchase requisitions and orders of more than \$1,000.00 but less than Five Thousand Dollars (\$5,000.00) will be authorized by those staff designated by the Administrative Manager.

Purchase requisitions and orders exceeding Five Thousand Dollars (\$5,000.00) will be authorized by either the Administrative Manager, Procurement Officer or designee appointed by the Administrative Manager. All purchase requisitions and orders will follow Section 3- 211 and any company procedure approved by Administrative Manager.

B - Organization of Public Procurement.

2-201 Centralization of Procurement ARJWS.

Except as otherwise provided in this Part, the ARJWS relating to the procurement of supplies, services and construction is hereby vested in the Procurement Officer as provided in this Regulation.

(11-35-510)

2-202 ARJWS to Contract for Certain Services.

(1) General ARJWS. For the purpose of procuring professional services normally obtained on a fee basis rather than by competitive bidding, (employment services, health care, consultant services) the ARJWS's Administrative Manager may contract for such services up to one year if the contract does not exceed Twenty Thousand Dollars (\$20,000.00). Those

contracts exceeding Twenty Thousand Dollars (\$20,000.00) shall be submitted to the Board for approval.

(11-35-1270)

(2) Legal and CPA Services. No contract for the services of general counsel or CPA services may be awarded without the approval of the Board.

(11-35-1250 and 1260)

2-203 Exemptions.

Supplies and services that are exempt from the competitive requirement of this Regulation shall be procured by the appropriate authorization and procedures relating to Payment Vouchers.

Examples but not limited to:

- (a) published books, maps, periodicals, and technical pamphlets;
- (b) postage stamps and postage fees;
- (c) other normal, fixed, recurring operation expenses such as utilities, etc.

(1) Payment Vouchers. All procurements requiring payment vouchers in lieu of a Purchase Order must be submitted for approval to the Administrative Manager or his designee.

C - Future Regulations.

2-301 Future Regulations.

The Board may pass additional regulations. No new regulation shall change any commitment, right, or obligation of the ARJWS or any contractual right in existence at the time of the new regulation.

ARTICLE III - SOURCE SELECTION AND CONTRACT FORMATION

A - Definitions.

See Section 1-201.

B - Methods of Source Selection

3-201 Methods of Selection.

Unless otherwise required by law, all ARJWS contracts shall be awarded by competitive sealed bidding, pursuant to Section 3-202 (Competitive Sealed Bidding), except as provided in:

- (a) Section 2-202 (ARJWS to Contract for Certain Services);
- (b) Section 2-203 (Exemptions);
- (c) Section 3-203 (Competitive Fixed Price Bidding);
- (d) Section 3-204 (Competitive Best Value Bidding);

- (e) Section 3-205 (Competitive On-Line Bidding);
 (f) Section 3-206 (Competitive Sealed Proposals);
 (g) Section 3-207 and 2-103 (Small Purchases and Other Simplified Purchasing Procedures);
 (h) Section 3-208 (Sole Source Procurement);
 (i) Section 3-209 (Emergency Procurement);
 (j) Section 3-210 (State Contract Price Procurement);

- (k) Section 5-203 (Construction Contract Management)
 (l) Section 5-501 (Architect-Engineer and Surveying Services);
 (11-35-1510)

3-202 Competitive Sealed Bidding.
 [2000(D)(2), 2030]

(1) Condition for Use. Contracts over Twenty Thousand (\$20,000.00) Dollars shall be awarded by formal competitive bidding except where as otherwise provided in Section 3-201 (Methods of Source Selection).

(2) Invitation for Bids. An invitation for bids shall be issued in an efficient and economical manner to at least three qualified sources on the bidders' lists appropriate for the particular procurement, and shall include specifications and all contractual terms and conditions applicable to the procurement. If the list does not contain three qualified sources, invitations for bids shall be issued to such qualified sources as are available. Public notice is also required.

(3) Bidders' Lists and Prequalification of Major Equipment.

(a) All sources requesting to be put on a bidders' list shall be so enlisted, unless the Procurement Officer or the ARJWS's Engineer makes a written determination that the source should not be enlisted in accordance with regulations of the Board. Decisions to reject enlistment shall be appealable to the Administrative Manager. The Procurement Officer shall ensure that the bidders' lists contain all known sources interested in bidding on procurement and shall review periodically the bidders' lists and require the addition to such lists of any appropriate sources which are not contained therein.

b) Prequalification of Major Equipment Manufacturers. Until the end of the design phase of a project, the ARJWS will offer opportunities for major equipment manufacturers to be listed on the Major Equipment Bidders List for future consideration if they prequalify major equipment. An evaluation of the equipment will be made by the ARJWS at no cost to the manufacturer if submittals are made before the end of the project design phase. If a manufacturer misses this deadline for prequalification, and the contractor submits an "or equal" substitution during the bidding process, the manufacturer or contractor shall pay the ARJWS's consulting engineer directly for the cost of the evaluation. The contractor must obtain the approval of the "or equal" substitution by the ARJWS prior to the contractor's submission of his bid. Any submission after the date defined in the bid will not be allowed. The submittal by the manufacturer or the contractor

for an "or equal" before or after that deadline shall include the following:

- i. Descriptive literature including information on materials used, minimum design standards, standard design features, manufacturing processes and facilities, and similar information which indicate experience and expertise in the manufacture of the product being evaluated including costs, warranty information, electrical requirements and diagrams, and erection requirements and weights.
- ii. Performance specifications applicable to the manufacturer's standard design which indicates the level of performance to be expected from the product.
- iii. A complete set of submittal drawings of similar products which have been completed and placed into operation.
- iv. A list of existing installations of products similar in type and size, information regarding experience at the installations.
- v. A brochure or equivalent material indicating technical capabilities, field service capabilities and financial information.
- vi. A complete list of all requirements of the Drawings and Specifications with which the manufacturer cannot conform, including reasons why alternate features are considered equivalent.
- vii. An operational and maintenance history of the equipment, including incidents of failure and repair during the warranty period of the product. If no history is available equal to the time provided for in the warranty, then it should be provided from the time of origin of the product.
- viii. A chart showing operation and maintenance and carrying costs based upon the above history.
- ix. A chart showing the projection of the cost of operation, maintenance and carrying cost until the date the manufacturer estimates the equipment will have to be replaced, together with the documentation upon which the projection is based.
- x. A list indicating the availability of spare parts and the time necessary for delivery.

(4) Public Notice. Adequate Public notice of the Invitation for Bid shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice shall include utilization of a bidders' list and publication in a newspaper of general circulation in this state such as Anderson Independent and with others such as F. W. Dodge and Associated General Contractors for electronic advertising.

(5) Bid Opening. Bids shall be opened publicly in the presence of two or more witnesses at the time and place designated in the Invitation for Bid. 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 recorded. The record and each bid shall be open to public inspection after award. Records of Bids shall be maintained by the ARJWS for three years and bids relating to a department shall be kept in place by that

department.

(6) Bid Evaluation and Acceptance. Bids shall be unconditional and accepted without alteration or correction, except as authorized in this Regulation. Bids shall be evaluated based on the requirements set forth in the Invitation for Bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.

(7) Correction or Withdrawal of Bids; Cancellation of Awards. Corrections or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the ARJWS 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 decision made by the Procurement Officer and approved by Administrative Manager but only upon a written request by a bidder and when documents will clearly evidence the error or mistake and which demonstrates the bidder will suffer substantial loss. Any correction causing the bidder to become low bidder must be clearly evident by an analysis of the bid documents.

(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 procuring agency's sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any bidder's bid must be documented in writing by the procurement officer and shall be included with the bid. Documentation concerning the clarification shall be subject to disclosure upon request.

(9) Tie Bids. If two or more responsible and responsive 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 ARJWS's service area.
- (d) Tie bids involving South Carolina firms both of whom are located in the ARJWS's service area must be resolved by the flip of a coin in the office of the Procurement Officer witnessed by all interested parties.

These are the only conditions under which any in-state preference is shown.

- (e) In all other situations where bids are tied, the award will be made by the purchasing agency to the tied bidder offering the quickest delivery time, or if the 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 or the head of a purchasing agency or either officer's designee witnessed by all interested parties.

(10) Award. Unless there is a compelling reason to reject bids as prescribed by regulation of the board, 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 procuring agency 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 and the date and location of posting must be announced at bid opening. When a contract has a total or potential value in excess of fifty 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. When a contract has a total or potential value in excess of twenty thousand dollars, sixteen days after notice is given the agency 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 sixteen day delay of award may be waived. A determination of responsibility must be made before award in accordance with Section 3-301.

In the event only one bid is received, the procurement officer shall (a) verify that the project was duly advertised as required in these regulations, (b) determine the relation of the bid to the engineer's estimate, and (c) determine whether the bid, in the interest of the ARJWS, should be rejected or accepted, and make his recommendation in writing to the Director.

(11) Request for Qualifications. Prior to soliciting bids, the procuring agency, acting through the authorized procurement officer, may issue a request for qualifications from prospective bidders. Such request shall contain at a minimum a description of the goods or services to be solicited by the invitation for bids, the general scope of the work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications shall be given in the manner provided in Section 3-202(4). 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.

(12) Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(11-35-1520)

(13) Receipt and Safeguarding of Bids

A. Procedures Prior to Bid Opening.

The Procurement Officer shall be responsible for handling all bids (including modifications) received prior to the time of opening and shall be kept secure, unopened in a locked bid box or safe. If an invitation for bids is canceled, bids shall be returned to the bidders. Necessary precautions shall be taken to ensure the security of the bid box or safe. Prior to bid opening, information concerning the identity and number of bids received shall not be available to the public. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

(14) 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 affect the relative standing of, or be otherwise 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 ARJWS. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

- (a) failure of a bidder to return the number of copies of signed bids required by the solicitation;
- (b) failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size;
- (c) failure of a bidder to sign its bid, but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization, and the bid carries such a signature or the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;
- (d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if (i) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid, thereon provided that the bidder states under oath that it received the amendment prior to bidding and that the bidder will stand by its bid price or (ii) the amendment has no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or the relative standing of 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 S. C. Code Ann. § 40-11-180, 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.

(11-35-1520(13))

(15) Rejection of Bids.

- (a) Application.

Unless there is a compelling reason to reject one or more bids, award will be made to the lowest

responsible and responsive bidder. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices.

(b) Cancellation of Bids Prior to Award.

When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be canceled. Invitations for bids may be canceled after opening, but prior to award, when such action is consistent with 3-202 (11)A. above and the Procurement Officer determines in writing that:

- (i) inadequate or ambiguous specifications were cited in the invitation;
- (ii) specifications have been revised;
- (iii) the supplies or services being procured are no longer required;
- (iv) the invitation did not provide for consideration of all factors of cost to the ARJWS;
- (v) bids received indicate that the needs of the ARJWS can be satisfied by a less expensive article differing from that on which the bids were invited;
- (vi) all otherwise acceptable bids received are at unreasonable prices;
- (vii) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
- (viii) At the discretion of the ARJWS.

(16) Rejection of Individual Bids.

(a) General Application

Any bid which fails to conform to All requirements of the invitation for bids shall be rejected.

(b) Alternate Bids

Any bid which does not conform to the specifications contained or referenced in the invitation for bids may be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.

(c) Nonresponsive Bids.

Any bid which fails to conform to the material bid specifications, the delivery schedule, or permissible alternates thereto stated in the invitation for bids, or other material requirements of the invitation for bids, may be rejected as nonresponsive.

(d) Conditions for the Rejection of ~~Bidders~~. Nonresponsive bids

A bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the ARJWS, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids should be rejected in which the bidder:

- (i) attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to the ARJWS cannot be determined;
- (ii) fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery";
- (iii) states a price but qualified such price as being subject to "price in effect at time of delivery";
- (iv) when not authorized by the invitation, conditions or qualifies his bid by stipulating that his bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement;
- (v) requires the ARJWS to determine that the bidder's product meets ARJWS specifications; or
- (vi) limits the rights of the ARJWS under any contract clause.
- (vii) Imbalancing of Bids will not be accepted (i.e., offering unreasonably low price on some items and compensating for them with unreasonably high prices on other items);
- (viii) Attaches any condition or qualification that reduces the bidder's legal liability or increases the ARJWS's responsibility.
- (ix) Price Unreasonableness.

Any bid may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price.

- (x) Bid Guarantee Requirement.

When a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bids shall be rejected.

- (xi) Incomplete or Unsigned Bids.

The Procurement Officer shall reject any incomplete or unsigned bids.

- (xii) Exceptions to Rejection Procedures.

Any bid received after the Procurement Officer of the ARJWS or his designee has declared that the time set for bid opening has arrived, shall be rejected unless a bid was in the possession of the designated purchasing office and had been misplaced by ARJWS employees in that office. In this event, the Procurement Officer shall annotate the bid tabulation and consider the misplaced bid along with the other previously received bids.

(17) Responsibility -

A. ARJWS Standards of Responsibility.

Factors to be considered in determining whether a bidder is responsible include whether a prospective contractor has:

- (1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the ARJWS; and
- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

B. Duty of Contractor to Supply Information.

The prospective contractor shall supply information requested by the Procurement Officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable.

C. Demonstration of Responsibility.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that such contractor possesses such necessary items;
- (2) acceptable plans to subcontract for such necessary items; or
- (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

D. Justification for Contract Award.

Before awarding a contract, the Procurement Officer must be satisfied that the prospective contractor is responsible.

E. Written Determination of Non-responsibility.

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Procurement Officer. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the procurement file.

(11-35-1810)

(18) Negotiations After Unsuccessful Competitive Sealed Bidding.

- (a) When bids received pursuant to an invitation for bids are considered unreasonable by the

ARJWS, exceed available funds or were not independently reached in open competition, and it is determined in writing by the Procurement Officer or his designee 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 the lowest base bid does not exceed available funds by an amount greater than five (5%) percent of the construction budget established for that portion of the work. However, each responsible and responsive bidder who submitted a bid under the original invitation must be notified of the determination and given a reasonable opportunity to negotiate. The negotiated price must be lower than the lowest bid received under the original solicitation. The ARJWS may change the scope of the work to reduce the cost to be within the established construction budget.

(b) When the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the ARJWS is able to identify additional funds for the project, in the amount of the difference between the lowest base bid and the approved available funds for the project, the ARJWS, in its discretion, may elect to accept the bid.

(11-35-3020(2)(d))

3-203 Competitive Fixed Price Bidding.

(1) Conditions for Use. When the ARJWS determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to ARJWS, a contract may be entered into by competitive fixed price bidding subject to the provisions of Section 3-202 and the ensuing regulations, unless otherwise provided for in this section.

(2) Fixed Price Bidding. The purpose of fixed priced bidding is to provide multiple sources of supply for specific goods or services based on a pre-set maximum price which the ARJWS will pay for such goods or services.

(3) Public Notice. Adequate public notice of the solicitation shall be given in the same manner as provided in Section 3-202(4).

(4) Pricing. The ARJWS shall establish, prior to issuance of the fixed price bid, a maximum amount it will pay for the goods or services desired.

(5) Evaluation. Vendor responses to the fixed price bid will be reviewed to determine if they are responsive and responsible.

(6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the requirements of the fixed priced bid. All bidders, whose bids, in the procuring agency's sole judgment, need clarification shall be accorded such an opportunity.

(7) Award. Award must be made to all responsive and responsible bidders to the ARJWS's request for competitive fixed price bidding. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.

(8) Bids Received after Award. Bidders not responding to the initial fixed price bid may be added to the awarded vendors list provided the bidder furnishes evidence of responsibility and responsiveness to the ARJWS's original fixed price bid as authorized by the solicitation.

(9) Remedies. The failure of a specific offeror to receive business, once it has been added to the awarded vendors list, shall not be grounds for a protest.

3-204 Competitive Best Value Bidding.

(1) Conditions for Use. When the ARJWS determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to ARJWS, a contract may be entered into by competitive best value bidding subject to the provisions of Section 3-202 and the ensuing regulations, unless otherwise provided for in this section.

(2) Best Value Bidding. The purpose of best value bidding is to allow factors other than price to be considered in the determination of award for specific goods or services based on pre-determined criteria identified by the ARJWS.

(3) Public Notice. Adequate public notice of the request for the solicitation shall be given in the same manner as provided in Section 3-202(4).

(4) Bid Opening: At bid opening, the only information that will be released is the names of the participating bidders. Cost information will be provided after the ranking of bidders and the issuance of award.

(5) Evaluation Factors. The best value bid shall state the factors to be used in determination of award and the numerical weighting for each factor. Cost must be a factor in determination of award and cannot be weighted at less than sixty percent. Best value bid evaluation factors may be defined to include, but are not limited to, any of the following as determined by the purchasing agency in its sole discretion and not subject to protest:

- (a) Operational costs that the ARJWS would incur if the bid is accepted;
- (b) Quality of the product or service, or its technical competency;
- (c) Reliability of delivery and implementation schedules;
- (d) Maximum facilitation of data exchange and systems integration;
- (e) Warranties, guarantees, and return policy;
- (f) Vendor financial stability;
- (g) Consistency of the proposed solution with the ARJWS's planing documents and announced strategic program direction;
- (h) Quality and effectiveness of business solution and approach;
- (i) Industry and program experience;
- (j) Prior record of vendor performance;
- (k) Vendor expertise with engagement of similar scope and complexity;
- (l) Extent and quality of the proposed participation and acceptance by all user groups;
- (m) Proven development methodologies and tools; and
- (n) Innovative use of current technologies and quality results.

(6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the best value bid. All bidders, whose bids, in ARJWS's sole judgment, need clarification shall be accorded such an opportunity.

(7) Selection and Ranking. Bids shall be evaluated by using only the criteria stated in the best value bid and by adhering to the weighting as assigned. All evaluation factors, other than cost, will be considered prior to determining the effect of cost on the score for each participating bidder. Once the evaluation is complete, all responsive bidders shall be ranked from most advantageous to least advantageous to the ARJWS, considering only the evaluation factors stated in the best value bid.

(8) Award. Award must be made to the responsive and responsible bidder whose bid is determined, in

writing, to be most advantageous to ARJWS, taking into consideration all evaluation factors set forth in the best value bid. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.

3-205 Competitive On-line Bidding.

(1) Conditions for Use. When the ARJWS determines that on-line bidding is more advantageous than other procurement methods provided by this code, a contract may be entered into by competitive on-line bidding, subject to the provisions of Section 3-202 and the ensuing regulations, unless otherwise provided in this section.

(2) Bidding Process. The solicitation must designate both an Opening Date and Time and a Closing Date and Time. The Closing Date and Time need not be a fixed point in time, but may remain dependant on a variable specified in the solicitation. At the Opening Date and Time, ARJWS must begin accepting real-time electronic bids. The solicitation must remain open until the Closing Date and Time. ARJWS may require bidders to register before the Opening Date and Time and, as a part of that registration, to agree to any terms, conditions, or other requirements of the solicitation. Following receipt of the first bid after the Opening Date and Time, the lowest bid price must be posted electronically to the Internet and updated on a real-time basis. At any time before the Closing Date and Time, a bidder may lower the price of its bid, except that after Opening Date and Time, a bidder may not lower its price unless that price is below the then lowest bid. Bid prices may not be increased after Opening Date and Time. Except for bid prices, bids may be modified only as otherwise allowed by this code. A bid may be withdrawn only in compliance with Section 3-202. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the Closing Date and Time, ARJWS may cancel the solicitation in accordance with this code or reopen electronic bidding to all pre-existing bidders by giving notice to all pre-existing bidders of both the new Opening Date and Time and the new Closing Date and Time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.

(3) Receipt and Safeguarding of Bids. Other than price, any information provided to ARJWS by a bidder must be safeguarded as required by Section 3-202(13).

(4) Provisions Not to Apply. Section 3-202(5) (Bid Opening) shall not apply to solicitations issued pursuant to this section.

3-206 Competitive Sealed Proposals.

(1) Conditions for Use. Subject to § 3-201, when the Procurement Officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the ARJWS, a contract may be entered into by competitive sealed proposals.

(2) Request for Proposals. Proposals shall be solicited through a Request for Proposal.

(3) Public Notice. Public notice of the Request for Proposal shall be given in the same manner as provided in Section 3-202(4) (Competitive Sealed Bidding, Public Notice).

(4) Proposal Opening. Proposals shall be publicly opened and only the names of the offerors disclosed at the proposal opening. Contents of competing offerors shall not be disclosed during the process of negotiation. Proposals shall be open for public inspection after contract award. Authentic confidential information as described in this Regulation marked as such in each proposal shall not be disclosed without written consent of the offeror.

(5) Discussion with Responsible Offerors and Revisions to Proposals. As provided in the Request for Proposal, discussions may be conducted with responsible offerors who submit proposals for the

purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(6) Evaluation Factors. The Request for Proposal shall state the evaluation factors in relative order of importance.

(7) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the ARJWS taking into consideration the evaluation factors set forth in the Request for Proposal. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(11-35-1530) [2000(D)(3), 2095]

3-207 Small Purchases and Other Simplified Purchasing Procedures.

This section addresses small purchases and other simplified procedures for purchase.

(1) Any procurement may be made in accordance with small purchase procedures herein, and Section 2-103 provided that procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

(2) The requesting department will have authorized requisitioners that can request small purchases for the department to a limit of One Thousand Dollars (\$1,000.00).

(3) Any purchase requisition One Thousand One Dollars (\$1,001.00) to Five Thousand Dollars (\$5,000.00) will be approved by those managers designated by the Administrative Manager. Any purchase requisition exceeding Five Thousand Dollars shall be approved by the Administrative Manager or his designee.

(4) Protest Rights. The provisions of Article VII shall not apply to contracts awarded under the procedures set forth in this section.

(5) Non-routine Requests (Work stoppage)

Purchasing will issue a purchase order number to a requesting individual or department to obtain an immediate needed or work stoppage item. Within twenty-four hours (24) of purchase, the requisition and related paperwork shall be received by the purchasing department.

(6) Competition and Price Reasonableness.

(a) Purchases Not in Excess of \$1,500.00. Small purchases not exceeding \$1,500.00 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. Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to 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. Therefore, action to verify the reasonableness of the price need be taken only when the

procurement officer of the governmental body suspects that the price may not be reasonable, e.g., comparison to previous price paid, personal knowledge of the item involved.

(b) Purchases from \$1,500.01 to \$5,000.00. Solicitations of verbal or written quotes from a minimum of three qualified sources of supply shall 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 \$5,000.01 to \$10,000.00. Solicitation of written quotes from a minimum of three qualified sources of supply shall be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible sources.

(d) Purchases from \$10,000.01 to \$20,000.00 Written solicitation of written quotes, bids, or proposals shall be made. The procurement shall be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the Office of General Services. A copy of the written solicitation and written quotes shall 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) Requirement to Advertise. All competitive procurements above \$20,000.00 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 Office of General Services. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement advertised in the "South Carolina Business Opportunities" publication.

(7) Establishment Of Blanket Purchase Agreements.

(a) General. A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

(b) Any blanket purchase agreement should contain the following: 1) a description of the agreement in general terms for a specified period for the agreement and a stipulated aggregate amount during the term; 2) a statement that the ARJWS is only obligated to the extent calls are made by an authorized person to make a call for no greater amount than the amount authorized for such person; 3) that a delivery ticket will be required showing the supplier referenced in the agreement, the date of the call, and an itemized list of supplies and services furnished and the price thereof with the date of delivery of the shipment; and 4) a statement that a summary invoice for the whole period will be submitted at any time during the period or at the end of the period as requested by the ARJWS. A blanket purchase agreement shall not be issued for a term longer than twelve months.

(11-35-1550) [2000(D)(1), 2100]

3-208 Sole Source Procurement.

A contract may be awarded for a supply, service, or construction item without competition when the Procurement Officer determines in writing that there is only one source for the required supply, service, ~~and~~ or construction item or to provide uniform system efficiencies. In cases of reasonable doubt,

competition must be solicited to the extent practical under the circumstances. Any decision that a procurement be restricted to one potential vendor must be accompanied by an explanation as to why no other vendor is suitable or acceptable to meet the need.

(11-35-1560) [2000(D)(4), 2105]

3-209 Emergency Procurement.

Notwithstanding any other provision of this Regulation, a manager may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, critical economy or efficiency or safety under emergency conditions, or where normal daily operations are affected; provided that such emergency procurement shall be made with such competition as is practicable under the circumstances and does not exceed Ten Thousand Dollars (\$10,000.00). A manager making an emergency purchase shall be required to document the procurement within five (5) working days to the Procurement Officer and Administrative Manager. Anything over Ten Thousand Dollars (\$10,000.00), the manager is to contact the Administrative Manager for approval. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(11-35-1570) [2000(D)(5), 2110]

3-210 State Contract Price Procurement.

A contract may be awarded for a supply, service, and equipment item without competition when the Procurement Officer determines in writing that the State through its procurement has been provided a price by a vendor which offers the same price to the ARJWS, and is fair and reasonable.

3-211 Cancellation of Invitation for Bids or Requests for Proposals.

An Invitation for Bids, a Request for Proposal, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part in the solicitation when it is in the best interest of the ARJWS. The reason therefore shall be made part of the contract file.

(11-35-1710)

3-212 Procurements at Auction.

The ARJWS having knowledge of an auction may elect to participate. The Procurement Officer shall (a) survey the needed items being offered at auction to ascertain their condition and usefulness, (b) determine a fair market value for new like items through informal quotes, (c) determine the fair market value from similar items considering age and useful life, and (d) estimated repair cost and delivery cost, if any, of the desired items. Using this information, the ARJWS Board shall determine the maximum price that it can pay for each item desired. At the auction, the Procurement Officer shall not exceed the maximum price so determined.

C - Qualifications and Duties

3-301 Responsibility of Bidders and Offerors.

(1) Determination of Responsibility. Responsibility of the bidder or offeror, as defined by Section 3-202(17) and shall be ascertained for each contract let by the ARJWS 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.

(2) Determination of Non-responsibility. A determination of non-responsibility of a bidder or offeror shall be made in writing. The unreasonable failure of a bidder or offeror to supply information within fifteen (15) days in connection with an inquiry with respect to responsibility may be grounds for a termination of non-responsibility with respect to such bidder or offeror.

3-302 Prequalification of Suppliers.

Prospective suppliers may be pre-qualified for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such pre-qualified suppliers.

(11-35-1820) [2130]

D - Types of Contracts

3-401 Types of Contracts.

Subject to the limitations of this Section, any type of contract which will promote the best interest of the ARJWS may be used, except a cost-plus-a-percentage-of-cost contract is prohibited.

(11-35-2010)

3-402 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.

3-403 Multi-Term Contract.

(1) Specified Period. A contract for supplies or services, excluding contractors, may be entered into for a period of time not to exceed three (3) years, provided the term of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(2) Determination Prior To Use. Prior to the utilization of a multi-term contract, the Procurement Officer shall determine in writing:

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

(b) that such a contract will serve the best interest of the ARJWS by encouraging effective competition or otherwise promoting economies in procurement administration.

(3) Cancellation Due To Unavailability of Funds In Succeeding Fiscal Periods. All multi-term contracts shall contain a clause stating that when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled at no cost to the ARJWS.

(11-35-2210 and 2220)

E - Inspections, And Audits, and Determinations.

3-501 Right to Inspect Plant.

The ARJWS may, at reasonable times, 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 the ARJWS.

3-502 Right to Audit Records.

(1) Audit of Cost or Pricing Data. The ARJWS may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data. Any person 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 (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(2) Contract Audit. The ARJWS shall be entitled to audit the books and records of a contractor or 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 (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

Section 3-503 Finality of Determinations.

The determinations required by Section 3-202(7) (Competitive Sealed Bidding: Correction or Withdrawal of Bids; Cancellation of Awards), Section 3-202(11) (Competitive Sealed Bidding: Request for Qualifications), Section 3-203(1) (Competitive Fixed Price Bidding: Conditions for Use), Section 3-204(1) (Competitive Best Value Bidding: Conditions for Use), Section 3-204(8) (Competitive Best Value Bidding; Award), Section 3-206(Competitive Sealed Proposals) Section 208 (Sole Source Procurement), Section 3-209 (Emergency Procurement), Section 3-301 (Responsibility of Bidders and Offerors, Determination of Nonresponsibility), Section 5-204 (Prequalification of Construction Bidders), Section 3-401 (Types and Forms of Contracts), Section 3-402 (Approval of Accounting System), Section 3-403 (Multi-Term Contracts, Determination Prior to Use), Section 5-101 (Procurement Procedure, Selection and Ranking of the Five Most Qualified), and Section 7-101(8) (Stay of Procurement During Protests. Decision to Proceed) shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

F - Reports and Records.

3-601 Reporting of Anti-competitive Practices.

When any information concerning collusion or other anti-competitive practices ~~are suspected~~ among any bidder or offerors comes to the attention of the ARJWS , a notice of the relevant facts shall be transmitted to the ARJWS's attorney.

3-602 Procurement Records.

(1) Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained in a contract file by the Procurement Officer or appropriate department head.

(2) Retention of Procurement Records. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the ARJWS. If a contract is being funded in whole or in part by assistance from a Federal agency, then all procurement records pertaining to that contract shall be maintained for five (5) years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement.

ARTICLE IV - SPECIFICATIONS

A - Specifications

4-101 Definitions.

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.

4-102 Duties of the Procurement Officer.

The Procurement Officer may prepare, or cause to be prepared, and issue specifications for supplies, services, and construction required by the ARJWS. The Procurement Officer shall obtain expert advice and assistance from personnel of the using department in the development of specifications. All specifications shall be so drafted so as to assure cost effective procurement and shall not be unduly restrictive.

(11-35-2720 and 2730) [2140]

4 -103 Exempted Items.

Specifications for supplies, services, and construction items exempted in Section 2-303 (Exemptions), may be prepared by the using department in accordance with the provisions of this Article.

ARTICLE V - PROCUREMENT OF CONSTRUCTION AND ARCHITECT - ENGINEER AND LAND SURVEYING SERVICES

A - Definitions

5-101 Definitions.

See Section 1-201.

B- Procurement Procedures.

5-201 Responsibility for Selection of Method of Construction Contract Management.

The Administrative Manager, or his designee, shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the Administrative Manager or his designee shall consider the ARJWS's requirements, its resources, and the potential contractors capabilities. The Administrative Manager or his designee shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

5-202 Contract Administration.

The Administrative Manager of the ARJWS or his designee shall maintain a contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded and the terms and conditions of the contract.

(11-35-3010) [2145]

5-203 Construction Procurement Procedures.

(1) Source Selection. All construction contracts shall be awarded by competitive sealed bidding pursuant to the procedures set forth in section 3-202 except as provided in this section and sections 3-204, (Small Purchases), 3-205 (Sole Source Procurement), and 3-206 (Emergency Procurement). Competitive sealed proposals as provided in section 3-203 shall not be used, except in such cases and in accordance with criteria as may be authorized and prescribed by regulation of the board.

(2) Bid Acceptance. In lieu of Section 3-202(7), the following provision applies. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The using agency's invitation for bids shall set forth all requirements of the bid including, but not limited to: (i) The using agency, in consultation with the architect-engineer assigned to the project, shall identify by specialty in the invitation for bids all subcontractors, as defined by applicable documents of the American Institute of Architects, who are expected to perform work to the prime contractor to or about the construction when those subcontractors' contracts are each expected to exceed three percent of the prime contractor's total base bid. In addition, the using agency, in consultation with the architect-engineer assigned to the project, may identify by specialty in the invitation for bids 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 invitation for bids is not protestable under Section 7-101 or any other provision of this code. Any bidder in response to an invitation for bids shall set forth in his bid the name of only those subcontractor(s) that will perform the work as identified in the invitation for bids. If the bidder determines to use his own employees to perform any portion of the work for which he would otherwise be required to list a subcontractor and if the bidder is qualified to perform such work under the terms of the invitation for bids, 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 the using agency by the contractor that a subcontractor who was listed is not financially responsible;

(b) upon a showing satisfactory to the using agency 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 the using agency 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 the using agency 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 the using agency 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 the using agency to be substantially unsatisfactory;

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

(i) with the consent of the using agency for good cause shown. The request for substitution must be made to the using agency 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. (v) The using agency shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening. (c) In lieu of Section 3-202(10) the following provisions apply. Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location which has been specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of the bidder's right to protest under Section 7-101 and the date and location of posting must be announced at bid opening. In addition to posting notice as provided above, the using agency shall promptly send all responsive bidders a copy of the notice of intended award and of the bid tabulation. Such mailed notice must indicate the posting date and must contain a statement of the bidder's right to protest under Section 7-101. Sixteen days after notice is given the agency may enter into a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. A determination of responsibility must be made before award in accordance with Section 3-301. If, after bid opening, only one bid is received and determined to be responsive and responsible and within the agency's construction budget, award may be made without the sixteen day waiting period.

(d) Negotiations After Unsuccessful Competitive Sealed Bidding. In lieu of Section 3-202(18), the following provisions apply:

(1) When bids received pursuant to an invitation for bids exceed available funds and it is determined in writing by the agency that circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder, provided that this base bid, less any deductive alternates, does not exceed available funds by an amount greater than five percent of the construction budget established for that portion of the work. The ARJWS may change the scope of the work to reduce the cost to be within the established construction budget but shall not reduce the cost below the established construction budget more than ten percent without the written approval of the procurement officer based on the best interest of the ARJWS.

(2) When the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the using agency is able to identify additional funds for the project, as certified by the appropriate

fiscal officers, in the amount of the difference between the lowest base bid and the approved available funds for the project, the Procurement Officer shall submit its request to use such additional funds to the Board.

(11-35-3020)

5-204 Prequalification of Construction Bidders.

The ARJWS shall develop a procedure and a list of criteria for pre-qualifying construction bidders. The criteria shall include, but not be limited to, prior performance, recent past references on all aspects of performance, financial stability, and experience on similar construction projects. The ARJWS may use the pre-qualification process only for projects where the construction involved is unique in nature or over two million dollars in value as determined by and subject to the approval of the ARJWS. All prequalification projects shall be under the supervision of the ARJWS. When the pre-qualification process is employed, only those bidders who are pre-qualified through this procedure are entitled to submit a bid for the project. The determination of which bidders are pre-qualified, and thereby entitled to bid, is not protestable under Section 5-204 or any other provision of this code.

The Pre-Qualification of a Bidder does not mean that Bidder is automatically pre-qualified through this procedure are entitled to submit a bid for the project. The determination of which bid

C - Bonds

5-301 Bid Security.

(1) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Procurement Officer to exceed Fifty Thousand (\$50,000.00) Dollars. Bid security shall be a bond provided by a surety company with an "A" minimum rating as stated in the most current publication of "Best's Key Rating Guide, Property Liability", and authorized to do business in this State, or the equivalent in cash, or otherwise supplied in a form satisfactory to the ARJWS. Nothing herein prevents the requirement of such bonds on construction contracts under Fifty Thousand (\$50,000.00) Dollars when the circumstances warrant.

(2) Amount of Bid Security. Bid security shall be in an amount equal to 2% to 5% of the amount of the bid at the discretion of the Procurement Officer.

(3) Rejection of Bid for Noncompliance with Bid Security Requirements. The Invitation for bids shall require a bid security bond or approved security in a proper amount. Noncompliance will require that the bid be rejected except that a bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating shall be given one working day from bid opening to cure such deficiencies. If the bidder cannot cure these deficiencies within one working day of bid opening, his bid shall be rejected.

(4) Withdrawal of Bids. After the bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids. If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

[2045, 2145]

5-302 Contract Performance and Payment Bonds.

(1) Required Amounts. When a construction contract is awarded in excess of Fifty Thousand (\$50,000.00) Dollars, the following bonds or security shall be delivered to the ARJWS and shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the ARJWS, executed by a surety company authorized to do business in this State, or otherwise secured in a manner satisfactory to the ARJWS in an amount equal to 100% of the price specified in the contract; and

(b) a payment bond satisfactory to the ARJWS, executed by a surety company authorized to do business in this State, or otherwise secured in a manner satisfactory to the ARJWS, for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

(2) ARJWS to Require Additional Bonds. Nothing in this section shall be construed to limit the ARJWS of the ARJWS to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section.

5-303 Bond Forms and Copies

(1) Bond Forms. The Procurement Officer shall provide the form of bonds required by this Part.

(2) Any person may request and obtain from the ARJWS a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.
(11-35-3030)

D - Construction Contract Clauses and Fiscal Responsibility

5-401 Contract Clauses and Their Administration

(1) Contract Clauses. All contracts for supplies, services and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Procurement Officer may establish standard contract clauses for its use or use other acceptable contracts which have adequate safeguards to protect the ARJWS's interests.
(11-35-3040)

5-402 Changes to Contracts/Fiscal Responsibility.

The Administrative Manager or his designee 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. However, Every contract modification, change order, or contract price adjustment under a construction contract with the ARJWS in excess of Fifty Thousand (\$50,000.00) Dollars shall be approved by the Board after receiving a report from the Administrative Manager as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget. The Administrative Manager will promptly notify the Board of all change orders over \$10,000.00 but less than \$50,000.00.

(11-35-3060)

E - Architect-Engineer, Construction Management and Land Surveying Services

5-501 Architect-Engineer, Construction Management and Land Surveying Services

(1) Invitation and Negotiation/Selection Committee. The Administrative Manager may announce a need for architectural, engineering, construction management or land surveying services “Construction Management” services are defined in Section 1-201(4). All such announcements shall be made publicly in the South Carolina Business Opportunities magazine and shall contain (a) a description of the proposed project, (b) the required professional services for the project, and (c) a formal invitation for submission of information including general scope of work, description of professional services required, submission deadlines, and how interested firms may apply for consideration.

(2) 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 a current and accurate Federal Standard Form 254, Architect-Engineer and Related Services Questionnaire, and Federal Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, or such similar information as the board may prescribe by regulation, and any other information which the particular invitation may require.

(3) Interviews with Interested Firms. Following receipt of information from all interested persons and firms, the agency 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 agency 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 agency selection committee to fully acquaint itself with the relative qualifications of the several interested firms.

(4) 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 work loads of the firms; (f) creativity and insight related to the project; and (g) related experience on similar projects.

Based upon these evaluations, the agency selection committee shall select the three persons or firms which, in its judgment, are the best qualified, ranking the three in priority order. The agency selection committee's report ranking the three chosen persons or firms shall be in writing and shall include data substantiating its determinations.

(5) Notice of Selection and Ranking. When it is determined by the agency that the ranking report is final, written notification of the election shall be immediately sent to all firms interviewed.

(6) Negotiation of Contract. The ARJWS Board or its designee shall negotiate a contract for services with the most qualified person or firm at a compensation which is fair and reasonable to the

ARJWS. Should the ARJWS 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.

5-502 Construction Work Prohibited by Architect or Engineer.

No architect or engineer performing design work, or construction manager performing construction management services as described in Section ~~41-35-2910(3)~~, pursuant to a contract awarded under any provision of this chapter may perform other work on that project as a contractor or subcontractor either directly or through a business in which he architect, or his architectural or engineering construction management firm has greater than a five percent interest. For purposes of this section, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a contractor or subcontractor. Should the construction manager perform or be responsible for safety compliance and other incidental construction activities, and these support activities are in noncompliance with the provisions of Section 41-15-210, then the construction management firm is subject to all applicable fines and penalties.

5-503 Design Build Contracts

Nothing in this section shall be construed to prohibit the ARJWS from entering into design build contracts when it is determined by the ARJWS Board to be in the best interest of the ARJWS.

ARTICLE 10

NOTE: Architectural services for federally funded projects are to be procured under the appropriate federal guidelines.

5-502 3 Exception for Small Architect-Engineer and Land Surveying Services Contracts.

(1) **Procurement Procedures for Small Contracts.** The Administrative Manager may approve the selection of small architect-engineer or land surveying services which are estimated not to exceed Twenty Thousand Dollars (\$20,000) by direct negotiation and selection, taking into account (a) the nature of the project, (b) their capability to produce the required services within a reasonable time, (c) past performance, and (d) eligibility to meet project budget requirements. Maximum fee allowed is Twenty Thousand Dollars (\$20,000) during a twelve month (1) period to any one firm for any one project. Large projects may not be broken down into smaller ones to circumvent the maximum fee limit.
(11-35-3230)

ARTICLE VI - SALE AND DISPOSAL OF SURPLUS PROPERTY

6-101 Surplus Property Determination

The Board may determine that any real or personal property has become surplus property. "Surplus Property" is defined as ARJWS-owned property with remaining useful life but that has no reasonable expectation of future use within the purposes of the ARJWS. Upon a determination by the

Board that the property is Surplus, the Procurement Officer shall proceed to obtain an appraisal of the value of the property and to ascertain the costs of sale or disposal or trade-in.

[2150]

6-102 Sale of Real Property

All Real Property to be sold shall first be appraised by a qualified and licensed Real Estate Appraiser and the appraised value shall determine the course of sale which at the discretion of the Administrative Manager or Board shall be by public sale or upon receipt of sealed bids. Notice shall be published once a week for two weeks in a paper of general circulation and be posted at the ARJWS Business Office and the sale site. This notice shall be posted fifteen (15) days prior to day of sale and state the terms and conditions and appraised value. If the sale is not accomplished at or above the appraised value, the Board may authorize a sale without restriction as to price or without reservation of the right to withdraw the property from public sale upon publication of notice in the same manner or may engage services of a broker to solicit interest in the property and offers to be evaluated in view of circumstances.

6-103 Sale of Personal Property

The sale of personal property shall be by auction, public sale or sealed bids to the highest bidder. The notice of sale or auction shall be published once a week for two (2) weeks in a paper of general circulation and be posted at the ARJWS Business Office and sale site. Such notice shall be given not less than ten (10) working days prior to the sale. The sale or auction shall be upon such terms and conditions as may be determined by the Administrative Manager.

6-104 Sale or Disposal of Junk personal property

The Procurement Officer may designate as “junk” any personal property not in actual use and that is beyond practical repair or otherwise unserviceable. Upon such designation, the junk property shall be sold or auctioned to the highest bidder. Notice of such sale or auction shall be given in accordance with Section 3-202..Should the Procurement Officer determine that the cost of sale or auction exceeds the fair market value of the junk item, the item may be disposed of or destroyed.

6-105 Trade-in Sales.

(l) Trade-in Value. The ARJWS may trade-in personal property the trade-in value of which may be applied to the procurement or lease of like items.

6-106 ARJWS for Leases, Sales to other governmental bodies, and for collective or group purchasing by governmental bodies

Nothing in this procurement code shall be construed to prevent the ARJWS from participating in leases or rentals of equipment or supplies or other items, as long as written justification is given for why it is in the best interest of the ARJWS and the public that the item should be leased rather than purchased.

Likewise, the ARJWS may purchase, acquire from, use or sell personal property to another governmental body upon Board approval provided such sale is at or near fair market value.

The ARJWS may also participate in cooperative purchasing with any other governmental body in accordance with S.C. Code Section 11-35-4810 et seq., and may also share personnel, facilities, material,

equipment or other items with another governmental body.

ARTICLE VII - REMEDIES

7-101 Resolving Protest

(1) Right to Protest, Time for Protest, Exclusive Remedy.

Any bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation or award of a contract shall protest to the Administrative Manager. The protest shall set forth the specifics of the protest and shall be submitted in writing within fifteen (15) days after such aggrieved persons know or should have known of the facts giving rise thereto.

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 Procurement Officer in the manner stated in subsection (2) below within fifteen (15) days of the date notification of award is posted in accordance with this Procurement Regulation.

The rights and remedies granted in this article to a disappointed bidder, offeror, contractor, or subcontractor are to the exclusion of all other rights and remedies of such disappointed bidder, offeror, contractor, or subcontractor against the ARJWS at common law or otherwise for the loss or potential loss of an award of a contract under this Procurement Regulation. A failure to file a protest within this time period shall be an absolute bar to any later filing.

(2) Protest Procedure. A protest under subsection (1) above shall be in writing, submitted to the 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. If applicable, a bond shall accompany the protest pursuant to Section 7-101(10).

(3) Duty and ARJWS to Attempt to Settle Protests. Prior to commencement of an administrative review as provided in subsection (4), the Procurement Officer, the head of the purchasing agency, or designers thereof shall attempt to settle by mutual agreement, a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. Settlements require approval of the Board.

(4) Administrative Review and Decision. If in the opinion of the Procurement Officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the Administrative Manager shall promptly conduct an administrative review and shall issue a decision in writing within ten (10) 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 (6) shall be mailed or otherwise furnished immediately to the protestant and any other party intervening. The Administrative Manager 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 to the Board.

(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 an appeal to the Board within ten (10) working days of posting of the decision. The request for review shall be directed

to the Administrative Manager, who shall forward the request to the Board and shall be in writing, setting forth the reasons why the person disagrees with the decision of the Administrative Manager.

(7) Upon request, the Board will review the determination by the Administrative Manager without any further hearing and may uphold the determination or set it aside. The Board may also determine what relief, if any, shall be given to the protestant and whether or not there should be a re-award or re-bid of the contract. The decision of the Board is appealable to the circuit court in the manner provided by Section 22 of Article I of the South Carolina Constitution and S. C. Code Ann. § 1-23-380 as amended.

(8) Stay of Procurement During Protest. A timely protest will stay procurement solicitation or award until a decision by the appropriate officer or Board; provided, however, if the Administrative Manager makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interest of the ARJWS, then procurement may continue.

(9) Frivolous Protest.

(a) Signature Constitutes a Certificate. The signature of a party or his attorney upon a document seeking to protest action constitutes a certificate that the signer has read the document, and, to the best of his knowledge, information and belief, found after reasonable inquiry, is well grounded in fact and warranted.

(b) Sanctions. Any document signed in violation of this section upon knowledge and notice from the Board may have imposed an appropriate sanction, including an order to pay reasonable expenses incurred by the ARJWS because of the filing of the protest, pleading, motion or other document, including a reasonable attorney fee.

(11-35-4330)

(10) Protest Bond.

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

award of a contract, the bond, irrevocable letter of credit, cashier's check, or money order shall be returned to the bidder or offeror. Failure to pay such costs and charges by the bidder or offeror protesting the intended award or award of a contract shall result in the forfeiture of the bond, irrevocable letter of credit, cashier's check, or money order to the extent necessary to cover the payment of all reasonable reimbursement costs adjudged against the protesting bidder or offeror. If the bidder or offeror prevails in the protest, the cost of providing the bond, irrevocable letter of credit or cashier check may be sought from the agency requesting the bond or irrevocable letter of credit. (11-35-4215)

B. ARJWS to Debar or Suspend

This section applies to a debarment for cause from consideration for award of contracts or a suspension from such consideration during an investigation where there is probable cause for such debarment. After reasonable notice of debarment to the person or firm involved, and a reasonable opportunity for such person or firm to be heard, the Procurement Officer shall recommend to the Administrative Manager the debarment of a person or firm for cause from consideration for award of contracts, provided that doing so is in the best interest of the ARJWS. The debarment shall be for a period as recommended by the Procurement Officer. The same officer shall have ARJWS to recommend suspension of a person from consideration for award of contracts, provided that doing so is in the best interest of the ARJWS, and there is probable cause for debarment. The suspension may be for a period of twelve (12), twenty-four (24), or thirty-six (36) months or a permanent debarment depending on the severity and must have approval of the Board. The causes for debarment or suspension shall include, but not be limited to, the following:

- (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or in the performance of such contract or subcontract;
- (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or professional honesty which currently, seriously and directly affects responsibility as a state contractor;
- (c) conviction under state or federal antitrust laws arising out of the submission of bids or proposals;
- (d) violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Officer to be so serious as to justify debarment action:
 - (i) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, the failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (e) any other cause the Procurement Officer determines to be so serious and compelling as to affect responsibility as contractor, including debarment by another governmental entity for any

cause listed herein.

(f) Board Review

A debarred party may request review by the Board. The Board may designate a panel to provide such review and report back to the Board concerning what relief, if any, should be given. The decision of the Board is appealable to the circuit court in the manner provided by Section 22 of Article I of the South Carolina Constitution and S. C. Code Ann. §1-23-380, as amended.

(11-35-4220)

DULY ADOPTED this the _____ day of _____, 2002.

CHAIRMAN

Attest:

SECRETARY