

MIDLANDS TECHNICAL COLLEGE ENTERPRISE CAMPUS AUTHORITY
PROCUREMENT POLICY

ARTICLE 1.

GENERAL PROVISIONS

SECTION 10. Citation.

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

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

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

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

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

SECTION 20. Purpose and policies.

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

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

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

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

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

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

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

(g) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the MTCECA procurement process.

SECTION 30. Obligation of good faith.

Every contract or duty within the MTCECA Procurement Policy imposes an obligation of good faith in its negotiation, performance or enforcement. “Good faith” means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

SECTION 35. MTCECA may not designate surety company.

If the MTCECA, enters into a procurement contract and requires the bidder to provide a surety bond to secure the bid or the performance or payment of the contract, MTCECA may not require that the surety bond be furnished by a particular surety company or through a particular agent or broker.

SECTION 40. Application of MTCECA Procurement Policy.

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

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

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

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

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

SECTION 45. Payment for supplies and services .

Payment for supplies and services shall be as stated in the terms and conditions of the contract for the supplies and services.

SUBARTICLE 3.

DETERMINATIONS

SECTION 210. Determinations.

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

SUBARTICLE 5.

DEFINITIONS

SECTION 310. Definitions.

Unless the context clearly indicates otherwise:

(2) “Board” means the governing body of the MTCECA.

(4) “Change order” means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

(5) “Chief officer” means the person, above the level of procurement officer, designated in writing as such by the MTCECA Agency Head.

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(7) “Construction” means the process of building, altering, repairing, remodeling, improving, or demolishing any Midlands Technical College or MTCECA structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings, or real property.

(8) “Contract” means all types of agreements, for the procurement of supplies, services, or construction.

(9) “Contract modification” means a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

(10) “Contractor” means any person having a contract with MTCECA.

(13) “Days” means calendar days. In computing any period of time prescribed by this Procurement Policy, or by any order of the Procurement Review Panel, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the state or federal government, then the period shall run to the end of the next business day.

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

(19) “Grant” means the furnishing by the State or the United States government of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award, the primary purpose of which is to procure specified end products, whether in the form of supplies, services, or construction. A contract resulting from such an award shall not be deemed a grant but a procurement contract.

(20) “Invitation for Bids” means a written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement of stated supplies, services or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

(24) “Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

(25) “Procurement officer” means any person duly authorized by MTCECA, to enter into and administer contracts and make written determinations and findings with respect thereto.

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

(28) “Request for Proposals (RFP)” means a written or published solicitation issued by the procurement officer for proposals to provide supplies, services, or construction which ordinarily result in the award of

the contract to the responsible bidder making the proposal determined to be most advantageous to MTCECA. The award of the contract must be made on the basis of evaluation factors that must be stated in the RFP.

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

(30) "Subcontractor" means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with MTCECA.

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

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

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

SUBARTICLE 7.

PUBLIC ACCESS TO PROCUREMENT INFORMATION

SECTION 410. Public access to procurement information.

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

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

- (1) customer lists;
- (2) design recommendations and identification of prospective problem areas under an RFP;
- (3) design concepts, including methods and procedures;
- (4) biographical data on key employees of the bidder.

Evaluative documents predecisional in nature such as inter- or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the predecisional deliberations.

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

SUBARTICLE 11.

ACCEPTANCE OF GIFTS-IN-KIND AND CERTAIN SERVICES

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

MTCECA may accept gifts-in-kind of architectural or engineering services, or both, and items of construction of value less than two hundred fifty thousand dollars with the approval of the Director of the Office of General Services and designated staff of the Joint Bond Review Committee, provided that these

gifts may not be made or accepted if these gifts are offered with intent of influencing the judgment of MTCECA. No other approvals or procedural requirements, including the provisions of Chapter 35, Title 11, may be imposed on the acceptance of these gifts.

ARTICLE 3.

PROCUREMENT ORGANIZATION

SECTION 540. Authority and duties of MTCECA.

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

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SUBARTICLE 3.

EXEMPTIONS

SECTION 710. Exemptions.

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

SUBARTICLE 5.

SECTION 840. Delegation of authority.

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

SECTION 841 Approval by State Budget and Control Board

The MTCECA Procurement Policy was approved by the State Budget and Control Board on January 25, 2005. The MTCECA Procurement Policy shall be resubmitted to the State Budget and Control Board for re-approval during the first quarter of the fifth calendar year following initial approval. The MTCECA Procurement Policy expires at the end of the second quarter of the fifth calendar year following initial approval unless re-approved by the State Budget and Control Board.

SUBARTICLE 9.

AUDITING

SECTION 1230. Auditing

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

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

ARTICLE 5.

SOURCE SELECTION AND CONTRACT

SUBARTICLE 1.

DEFINITIONS

SECTION 1410. Definitions of terms used in this article.

Unless the context clearly indicates otherwise:

- (1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with cost principles .
- (2) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:
 - (a) is regularly maintained by a manufacturer or vendor of an item;
 - (b) is either published or otherwise available for inspection by customers and
 - (c) states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies or services involved.
- (3) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section 1520.
- (4) "Purchase description" means specifications or any other document describing the supplies, services, or construction to be procured.
- (5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance which may be substantiated by past performance.
- (7) "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

SUBARTICLE 3.

METHODS OF SOURCE SELECTION

SECTION 1510. Methods of source selection.

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

- (1) Section 1525 (Fixed Priced Bidding);

- (2) Section 1528 (Competitive Best Value Bidding);
- (6) Section 1530 (Competitive Sealed Proposals);
- (7) Section 1540 (Negotiations After Unsuccessful Competitive Sealed Bidding);
- (8) Section 1550 (Small Purchases);
- (9) Section 1560 (Sole Source Procurements);
- (10) Section 1570 (Emergency Procurements);
- (13) Section 3020 (Construction Procurement Procedures);
- (14) Section 3220 (Architect-Engineer, Construction Management and Land Surveying Services Procurement Procedures);
- (15) Section 3230 (Exception for Small Architect-Engineer and Land Surveying Services Contracts).

SECTION 1520. Competitive sealed bidding.

- (1) Condition for Use. Contracts amounting to one hundred thousand dollars or more shall be awarded by competitive sealed bidding except as otherwise provided in Section 1510.
- (2) Invitation for Bids. An invitation for bids shall be issued in an efficient and economical manner and shall include specifications and all contractual terms and conditions applicable to the procurement.
- (3) Notice. Adequate notice of the invitation for bids shall be given at a reasonable time prior to the date set forth therein for the opening of bids. Such notice shall include publications in a newspaper of general circulation in the State such as “South Carolina Business Opportunities” .
- (4) Receipt and Safeguarding of Bids. All bids (including modifications) received prior to the time of opening shall be kept secure and unopened, except as otherwise provided for in this Procurement Policy.
- (5) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids and as otherwise provided in this Procurement Policy. The amount of each bid, and such other relevant information , together with the name of each bidder, shall be tabulated. The tabulation shall be open to public inspection at that time.
- (6) Bid Acceptance and Bid Evaluation. Bids shall be accepted unconditionally without alteration or correction, except as otherwise authorized in this Procurement Policy. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. Bids shall be evaluated based on the requirements set forth in the invitation for bids and in accordance with this Procurement Policy.
- (7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation and reaward of awards or contracts, after award but prior to performance may be permitted in accordance with Appendix A. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the MTCECA or fair competition shall be permitted. Except as may otherwise be provided by Appendix A, all decisions to permit the correction or withdrawal of bids, or to cancel awards, or contracts, after award but prior to performance shall be supported by a written determination by the chief officer .
- (8) Discussion with Bidders. As provided in the invitation for bids, discussions may be conducted with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of the invitation for bids. All bids, in MTCECA’s sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any bidder’s bid must be documented in writing by the procurement officer and shall be included with the bid. Documentation concerning the clarification shall be subject to disclosure upon request as required by Section 410.
- (9) Tie Bids. If two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined as follows:
 - (a) If there is a South Carolina firm tied with an out-of-state firm, the award must be made automatically to the South Carolina firm.
 - (b) Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in Fairfield, Lexington or Richland County.

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

(e) In all other situations where bids are tied, the award will be made by the procurement officer to the tied bidder offering the quickest delivery time, or if the tied bidders have offered the same delivery time, the tie shall be resolved by the flip of a coin in the office of the chief officer or MTCECA agency head or designee and witnessed by all interested parties.

(10) Award. Unless there is a compelling reason to reject bids as prescribed by Appendix A, notice of an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location specified in the invitation for bids. Prior to the posting of the award, MTCECA may negotiate with the lowest responsive and responsible bidder to lower his bid within the scope of the invitation for bids. The invitation for bids and the posted notice must contain a statement of a bidder's right to protest under Section 4210(1) and the date and location of posting must be announced at bid opening. When a contract has a total or potential value in excess of one hundred thousand dollars, in addition to the posted notice, notice of an intended award must be given to all bidders responding to the solicitation, except when only one response is received. Such notice must contain a statement of the bidder's right to protest under Section 4210(1).

When a contract has a total or potential value in excess of one hundred thousand dollars, sixteen days after notice is given MTCECA may enter into a contract with the bidder named in the notice in accordance with the provisions of this Procurement Policy and of the bid solicited. When only one response is received, the notice of intended award and the sixteen-day delay of award may be waived. A determination of responsibility must be made before award in accordance with Section 1810.

(11) Request for Qualifications. Prior to soliciting bids, the procurement officer, may issue a request for qualifications from prospective bidders. Such request shall contain at a minimum a description of the supplies or services to be solicited by the invitation for bids, the general scope of the work, the deadline for submission of information, and how prospective bidders may apply for consideration. The request shall require information concerning the prospective bidders' product specifications, qualifications, experience, and ability to perform the requirements of the contract. Adequate public notice of the request for qualifications shall be given in the manner provided in Section 1520(3).

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

(13) Minor Informalities and Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of MTCECA. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

(a) failure of a bidder to return the number of copies of signed bids required by the solicitation;

(b) failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size;

(c) failure of a bidder to sign its bid, but only if the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization, and the bid carries such a signature or the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned document, such as the submission of a bid guarantee with the bid or a letter signed by the bidder with the bid referring to and identifying the bid itself;

- (d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if:
 - (i) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid, thereon, provided that the bidder states under oath that it received the amendment prior to bidding and that the bidder will stand by its bid price or,
 - (ii) the amendment has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the governmental body;
- (e) failure of a bidder to furnish an affidavit concerning affiliates;
- (f) failure of a bidder to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs;
- (g) failure of a bidder to furnish cut sheets or product literature;
- (h) failure of a bidder to furnish certificates of insurance;
- (i) failure of a bidder to furnish financial statements;
- (j) failure of a bidder to furnish references;
- (k) failure of a bidder to furnish its bidder number; and
- (l) notwithstanding Section 40-11-200(B) of the South Carolina Code of Laws, the failure of a bidder to indicate his contractor's license number or other evidence of licensure, provided that no contract shall be awarded to the bidder unless and until the bidder is properly licensed under the laws of South Carolina.

SECTION 1525. Competitive fixed price bidding.

- (1) Conditions for Use. When the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to MTCECA, a contract may be entered into by competitive fixed price bidding subject to the provisions of Section 1520 and Appendix A, unless otherwise provided for in this section.
- (2) Fixed Price Bidding. The purpose of fixed price bidding is to provide multiple sources of supply for specific supplies or services based on a preset maximum price that the MTCECA will pay for such supplies or services.
- (3) Public Notice. Adequate public notice of the solicitation shall be given in the same manner as provided in Section 1520(3).
- (4) Pricing. The MTCECA shall establish, prior to issuance of the fixed price bid, a maximum amount the MTCECA will pay for the supplies or services desired.
- (5) Evaluation. Vendors' responses to the fixed price bid will be reviewed to determine if they are responsive and responsible.
- (6) Discussion with Responsive Bidders. Discussions may be conducted with apparent responsive bidders to assure understanding of the requirements of the fixed price bid. All bidders whose bids, in the procurement officer's sole judgment, need clarification shall be accorded such an opportunity.
- (7) Award. Award must be made to all responsive and responsible bidders to the MTCECA request for competitive fixed price bidding. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.
- (8) Bids Received After Award. Bidders not responding to the initial fixed price bid may be added to the awarded vendors' list provided the bidder furnishes evidence of responsibility and responsiveness to the MTCECA original fixed price bid as authorized by the solicitation.
- (9) Remedies. The failure of a specific offeror to receive business, once it has been added to the awarded vendors' list, shall not be grounds for a contract controversy under Section 4230.

SECTION 1528. Competitive best value bidding.

- (1) Conditions for Use. When a procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the MTCECA, a contract may be entered

into by competitive best value bidding subject to the provisions of Section 1520 and Appendix A, unless otherwise provided for in this section.

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

(3) Public Notice. Adequate public notice of the request for the solicitation shall be given in the same manner as provided in Section 1520(3).

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

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

(a) operational costs that the MTCECA would incur if the bid is accepted;

(b) quality of the product or service, or its technical competency;

(c) reliability of delivery and implementation schedules;

(d) maximum facilitation of data exchange and systems integration;

(e) warranties, guarantees, and return policy;

(f) vendor financial stability;

(g) consistency of the proposed solution with the MTCECA's planning documents and announced strategic program direction;

(h) quality and effectiveness of business solution and approach;

(i) industry and program experience;

(j) prior record of vendor performance;

(k) vendor expertise with engagement of similar scope and complexity;

(l) extent and quality of the proposed participation and acceptance by all user groups;

(m) proven development methodologies and tools; and

(n) innovative use of current technologies and quality results.

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

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

(8) Award. Award must be made to the responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the MTCECA, taking into consideration all evaluation factors set forth in the best value bid. The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit.

SECTION 1530. Competitive sealed proposals.

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

(2) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 1520(3).

(3) Receipt of Proposals. Proposals shall be opened publicly in accordance with procedures of the MTCECA. A tabulation of proposals shall be prepared and shall be open for public inspection after contract award.

(4) Request for Qualifications. Prior to soliciting proposals, the procurement officer, may issue a request for qualifications from prospective offerors. Such request shall contain at a minimum a description of the supplies or services to be solicited by the request for proposals and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract.

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

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

(6) Discussion with Offerors. As provided in the request for proposals, discussions may be conducted with apparent responsive offerors for the purpose of clarification to assure full understanding of the requirements of the request for proposals. All offerors, whose proposals, in MTCECA's sole judgment, need clarification shall be accorded such an opportunity.

(7) Selection and Ranking. Proposals shall be evaluated using only the criteria stated in the request for proposals and there must be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to the MTCECA, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award shall be made in accordance with Section 1530(9) below.

(8) Negotiations. Whether price was an evaluation factor or not, the procurement officer, may, in its sole discretion and not subject to challenge through a protest filed under Section 4210, proceed in any of the manners indicated below:

(a) negotiate price with the highest ranked offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted, in the sole discretion of MTCECA, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by MTCECA in its sole discretion; or

(b) negotiate with the highest ranking offeror on matters affecting the scope of the contract, so long as the overall nature and intent of the contract is not changed. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of MTCECA, with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by MTCECA in its sole discretion; or

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

(d) if, after following the procedures set forth in this subsection, a contract is not able to be negotiated, the scope of the request for proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive offerors must be allowed to submit their best and final offers.

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

(9) Award. Award must be made to the responsive offeror whose proposal is determined in writing to be the most advantageous to the MTCECA, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the MTCECA determines to utilize one of the options provided

in Section 1530(8). The contract file shall contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contract shall be the same as those stated in Section 1520(10).

SECTION 1540. Negotiations after unsuccessful competitive sealed bidding.

When bids received pursuant to an invitation for bids under Section 1520 are considered unreasonable by the MTCECA, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the MTCECA fiscal officer, and it is determined in writing by the chief officer, that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

- (1) each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
- (2) the negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation;
- (3) the negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.

SECTION 1550. Bid procedures for Small Purchases.

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

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

(b) Purchases from five thousand one cents to twenty five thousand dollars. Solicitations of verbal or written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive and responsible source.

(c) Purchases from twenty five thousand one cents to fifty thousand dollars. Solicitation of written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition. The award must be made to the lowest responsive and responsible source.

(d) Purchases from fifty thousand one cents to one hundred thousand dollars. Written solicitation of written quotes, bids, or proposals shall be made. The procurement must be advertised at least once in the South Carolina Business Opportunities publication. A copy of the written solicitation and written quotes must be attached to the purchase requisition. Except as otherwise provided in this Procurement Policy, the award shall be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.

(3) Protest rights. The provisions of Section 4210 do not apply to contracts awarded under the procedures set forth in this section.

(4) All competitive procurements above fifty thousand dollars must be advertised at least once in the South Carolina Business Opportunities publication.

SECTION 1560. Sole source procurement.

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

Written documentation must include the determination and basis for the proposed sole source procurement. Any delegation of authority respect to sole source determinations must be submitted in

writing to the board. In cases of reasonable doubt, competition must be solicited. Any decision by MTCECA that a procurement be restricted to one potential vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

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

SECTION 1570. Emergency procurements.

Notwithstanding any other provision of this Procurement Policy, the MTCECA agency head or a designee above the level of procurement officer may make or authorize others to make emergency procurements only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

SUBARTICLE 5.

CANCELLATION OF SOLICITATIONS

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

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

SUBARTICLE 7.

RESPONSIBILITY OF BIDDERS AND OFFERORS

SECTION 1810. Responsibility of bidders and offerors.

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

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

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

SECTION 1830. Cost or pricing data.

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

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

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

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

(3) Cost or Pricing Data Not Required. The requirements of this section shall not apply to contracts:

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

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

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

(d) where it is determined in writing that the requirements of this section may be waived and the reasons for such waiver are stated in writing.

SUBARTICLE 9.

TYPES AND FORMS OF CONTRACTS

SECTION 2010. Types of contracts; contract forms;

(1) Types of Contracts. Subject to the limitations of this section, any type of contract which will promote the best interests of MTCECA may be used, except that the use of a cost-plus-a-percentage-of-cost contract shall be approved by the board. A cost-reimbursement contract, including a cost-plus-a-percentage-of-cost contract, shall be used only when a determination sufficient for external audit is prepared showing that such contract is likely to be less costly to the MTCECA than any other type or that it is impracticable to obtain the supplies, services or construction required except under such a contract.

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

SECTION 2030. Multi-term contracts.

(1) Specified Period. Unless otherwise provided by law, a contract for supplies or services shall not be entered into for any period of more than one year unless approved in a manner prescribed in Appendix A; provided, that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

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

- (a) that estimated requirements cover the period of the contract and are reasonably firm and continuing;
- (b) that such a contract will serve the best interests of MTCECA by encouraging effective competition or otherwise promoting economies .
- (3) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.
- (4) The maximum time for any multi-term contract is seven years. Contracts exceeding seven years must be approved by the Board.

SUBARTICLE 11.

AUDIT OF RECORDS

SECTION 2220. Right to audit records.

(1) Audit of Cost or Pricing Data. All MTCECA contracts shall contain a clause setting forth the right at reasonable times and places to audit the books and records of any contractor or subcontractor who has submitted cost or pricing data pursuant to Section 1830 to the extent that such books and records relate to such cost or pricing data. The contract shall further set forth that the contractor or subcontractor who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the chief officer; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the chief officer.

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

SUBARTICLE 13.

DETERMINATIONS AND REPORTS

SECTION 2410. Finality of determinations.

The determinations required by Section 1520(7) (Competitive Sealed Bidding: Correction or Withdrawal of Bids; Cancellation of Awards), Section 1520(11) (Competitive Sealed Bidding: Request for Qualifications), Section 1525(1) (Competitive Fixed Price Bidding: Conditions for Use), Section 1528(1) (Competitive Best Value Bidding: Conditions for Use), Section 1528(8) (Competitive Best Value Bidding: Award), Section 1530(1) (Competitive Sealed Proposals, Conditions for Use), Section 1530(4) (Competitive Sealed Proposals: Request for Qualifications), Section 1530(8) (Competitive Sealed Proposals: Negotiations), Section 1530(9) (Competitive Sealed Proposals, Selection and Ranking of Prospective Offerors), Section 1530(10) (Competitive Sealed Proposals Award), Section 1540 (Negotiations After Unsuccessful Competitive Sealed Bidding), Section 1560 (Sole Source Procurement), Section 1570 (Emergency Procurement), Section 1810(2) (Responsibility of Bidders and Offerors, Determination of Nonresponsibility), Section 1830(3) (Cost or Pricing Data, Cost or Pricing Data Not Required), Section 2010 (Types and Forms of Contracts), Section 2030(2) (Multi-Term Contracts, Determination Prior to Use), Section 3220(5) (Procurement Procedure, Selection and Ranking of the

Three Most Qualified), and Section 4210(7) (Stay of Procurement During Protests, Decision to Proceed) shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. The procurement officer or MTCECA's designees shall review samples of such determinations periodically, and issue reports and recommendations on the appropriateness of the determinations made.

SECTION 2420. Reporting of anticompetitive practices.

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

SECTION 2430. Retention of procurement records.

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

SECTION 2440. Records of procurement actions.

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

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

(2) Publication of Records. A copy of the record regarding sole source and emergency procurements shall be submitted to the Materials Management Office on an annual basis and shall be available for public inspection.

ARTICLE 7.

SPECIFICATIONS

SUBARTICLE 1.

DEFINITIONS

SECTION 2610. Definitions of terms used in this article.

As used in this article, the term "specifications" means any technical or purchase description or other description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may also include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

SUBARTICLE 3.

SPECIFICATIONS

SECTION 2710. Issuance of specifications; duties of the MTCECA.

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

SECTION 2730. Assuring competition.

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

SECTION 2750. Specifications prepared by architects and engineers.

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

ARTICLE 9.

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

SUBARTICLE 1.

DEFINITIONS

SECTION 2910. Definitions of terms used in this article.

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

- (1) "Architect-engineer and land surveying services" are those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture, and interior design pertaining to construction, as defined by the laws of this State, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.
- (2) "Construction" means the process of building, altering, repairing, remodeling, improving, or demolishing any public structure or building or other public improvements of any kind to any real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- (3) "Construction management services" are those professional services associated with a system in which MTCECA directly contracts with a professional construction manager to provide that group of management activities required to plan, schedule, coordinate, and manage the design and construction plan of a MTCECA project in a manner that contributes to the control of time, cost, and quality of construction as specified in the construction management contract.

SUBARTICLE 3.

CONSTRUCTION SERVICES

SECTION 3010. Method of construction contracting administration.

The method of construction contracting administration used for a construction project by the MTCECA shall be determined to be that method which is most advantageous to MTCECA and will result in the

most timely, economical, and successful completion of the construction project. The MTCECA shall determine in writing the appropriate method of construction contracting administration for a particular project and shall state in writing the facts and considerations which led to the selection of that particular method.

SECTION 3020. Construction procurement procedures.

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

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

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

(i) MTCECA, in consultation with the architect-engineer assigned to the project, shall identify all major subcontractors, who are expected to perform work for the prime contractor to or about the construction. In addition, MTCECA in consultation with the architect-engineer assigned to the project, may identify by specialty any subcontractors who are expected to perform work which is vital to the project. The determination of which subcontractors are included in the list provided in the solicitation is not protestable under any other provision of this Procurement Policy. Any bidder in response to a solicitation for bids shall set forth in his bid the name of only those subcontractors that will perform the work as identified in the solicitation for bids. If the bidder determines to use his own employees to perform any portion of the work for which he would otherwise be required to list a subcontractor and if the bidder is qualified to perform such work under the terms of the solicitation, the bidder shall list himself in the appropriate place in his bid and not subcontract any of that work except with the approval of MTCECA for good cause shown.

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

(iii) No prime contractor whose bid is accepted shall substitute any person as subcontractor in place of the subcontractor listed in the original bid, except for one or more of the following reasons:

(a) upon a showing satisfactory to MTCECA by the contractor that a subcontractor who was listed is not financially responsible;

(b) upon a showing satisfactory to MTCECA by the contractor that the scope of work bid by a listed subcontractor did not include a portion of the work required in the plans and specifications, and the exclusion is not clearly set forth in the listed subcontractor's original bid;

(c) upon a showing satisfactory to MTCECA made by the contractor within four working days of the bid opening that the subcontractor was listed as a result of an inadvertent clerical error;

(d) upon a showing satisfactory to MTCECA by the contractor that the listed subcontractor failed or refused to submit a performance and payment bond when requested by the prime contractor after the subcontractor had represented to the prime contractor that he could obtain a performance and payment bond;

(e) upon a showing satisfactory to MTCECA by the contractor that the listed subcontractor is required to be licensed and does not have the license by the time it is required by law;

(f) when the listed subcontractor fails or refuses to perform his subcontract;

(g) when the work of the listed subcontractor is found by MTCECA to be substantially unsatisfactory;

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

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

The request for substitution must be made to MTCECA in writing. This written request does not give rise to any private right of action against the prime contractor in the absence of actual malice.

(iv) Where substitution is allowed, the prime contractor, before obtaining prices from any other subcontractor, must attempt in good faith to negotiate a subcontract with at least one subcontractor whose

bid was received prior to the submission of the prime contractor's bid. Nothing in this section affects a contractor's ability to request withdrawal of a bid in accordance with the provisions of this Procurement Policy.

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

(c) When bids received pursuant to an invitation for bids conducted pursuant to Section 1520 exceeds available funds and it is determined in writing by MTCECA that circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder, provided that this base bid, less any deductive alternates, does not exceed available funds by an amount greater than five percent of the construction budget established for that portion of the work. MTCECA may change the scope of the work to reduce the cost to be within the established construction budget but shall not reduce the cost below the established construction budget more than ten percent without the written approval of the chief officer based on the best interest of MTCECA.

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

SECTION 3025. Approval of architectural, engineering or construction changes

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

SECTION 3030. Bond and security.

In all cases involving bonding and security, the requirement shall be left to the discretion of the MTCECA. The provisions of this section do not relieve MTCECA of any other applicable statutory requirements including, but not limited to Title 29, Chapter 6 of the South Carolina Code of Laws.

SECTION 3060. Fiscal responsibility.

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

SUBARTICLE 5.

ARCHITECT-ENGINEER, CONSTRUCTION MANAGEMENT, AND LAND SURVEYING SERVICES

SECTION 3210. Applicability and policy.

It is the policy of MTCECA to announce publicly all requirements for architect-engineer, construction management, and land surveying services and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the particular type of services required and at fair and

reasonable prices. This policy does not prohibit the acquisition of such services pursuant to Article 5 when such services are acquired in conjunction with construction.

SECTION 3220. Procurement procedures.

(1) Selection Committee. MTCECA shall establish its own architect-engineer, construction management, and land surveying services selection committee hereinafter referred to as the selection committee, which shall be composed of those individuals whom the MTCECA agency head determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The MTCECA agency head shall serve on all selection committees.

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

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

The invitation shall include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, the submission deadline, and how interested firms may apply for consideration. The invitation shall be formally advertised in South Carolina Business Opportunities.

(3) Response to Invitation. The date for submission of information from interested persons or firms in response to an invitation shall be not less than fifteen days after publication of the invitation. Interested architect-engineer, construction management, and land surveying persons or firms shall be required to respond to the invitation with the submission of information which the invitation requires.

(4) Interviews with Interested Firms. Following receipt of information from all interested persons and firms, the selection committee shall hold interviews with at least three persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews. If less than three persons or firms have responded to the advertisement, the committee shall hold interviews with those that did respond. The selection committee's determination as to which will be interviewed shall be in writing and shall be based upon its review and evaluation of all submitted materials. The written report of the committee shall specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. The purpose of the interviews shall be to provide such further information as may be required by the MTCECA selection committee to fully acquaint itself with the relative qualifications of the several interested firms.

(5) Selection and Ranking of the Three Most Qualified. The selection committee shall evaluate each of the persons or firms interviewed in view of their:

- (a) past performance;
- (b) the ability of professional personnel;
- (c) demonstrated ability to meet time and budget requirements;
- (d) location;
- (e) recent, current, and projected workloads of the firms;
- (f) creativity and insight related to the project; and
- (g) related experience on similar projects and any other criteria identified in the invitation.

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

(7) Negotiation of Contract. The procurement officer shall negotiate a contract for services with the most qualified person or firm at a compensation which is fair and reasonable to the MTCECA. Should the procurement officer be unable to negotiate a satisfactory contract with this person or firm, negotiations shall be formally terminated. Negotiations shall commence in the same manner with the second and then the third most qualified until a satisfactory contract has been negotiated. If no agreement is reached with

one of the three, additional persons or firms in order of their competence and qualifications shall be selected after consultation with the selection committee, and negotiations shall be continued in the same manner until agreement is reached.

(9) Award. Once a contract has been successfully negotiated in accordance with this section, notification of award of a contract shall be sent to all firms responding to the invitation.

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

(1) Procurement Procedures for Certain Contracts. When MTCECA is securing architect-engineer or land surveying service which is estimated not to exceed fifty thousand dollars, MTCECA may employ the architects, engineers, or land surveyors by direct negotiation and selection, taking into account:

(a) the nature of the project,

(b) the proximity of the architect-engineer or land surveying services to the project,

(c) the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time,

(d) past performance, and

(e) ability to meet project budget requirements.

(2) Maximum Fees Payable to One Person or Firm. Fees paid during the twenty-four month period immediately preceding negotiation of the contract by any MTCECA for professional services performed by any one architectural-engineering or land surveying firm pursuant to Section 3230(1) shall not exceed one hundred thousand dollars. All persons or firms seeking to render professional services pursuant to this section shall furnish MTCECA a list of professional services, including fees paid therefor, performed for the MTCECA during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.

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

SUBARTICLE 3.

REGULATIONS FOR SALE, LEASE, TRANSFER, AND DISPOSAL

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

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

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

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

ARTICLE 17.

LEGAL AND CONTRACTUAL REMEDIES

SUBARTICLE 1.

ADMINISTRATIVE RESOLUTION OF CONTROVERSIES

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

SECTION 4210. Right to protest; procedure; settlement of protest; administrative review and decision; notice of decision; finality; stay of procurement pending; exclusivity of remedy.

(1) Right to Protest; Exclusive Remedy.

(a) Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the chief officer in the manner stated in subsection (2) below within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue.

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the chief officer in the manner stated in subsection (2) below within fifteen days of the date notification of award is posted in accordance with this code.

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

(2) Protest Procedure. A protest under subsection (1) shall be in writing, submitted to the chief officer, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

(3) Duty and Authority to Attempt to Settle Protests. Prior to commencement of an administrative review as provided in subsection (4), the chief officer, MTCECA agency head, or designees thereof shall attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The chief officer, MTCECA agency head, or designees thereof shall have the authority to approve any settlement reached by mutual agreement.

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

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

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 4410(1) within ten days of posting of the decision in accordance with Section 4210(5). The request for review shall be directed to the chief

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

(7) Stay of Procurement During Protests. In the event of a timely protest under subsection (1) MTCECA shall not proceed further with the solicitation or award of the contract until a decision is rendered by the chief officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel; provided, however, that solicitation or award of a protested contract will not be stayed if the chief officer, or MTCECA agency head, makes a written determination that the solicitation or award of the contract without delay is necessary to protect the best interests of the MTCECA.

SECTION 4220. Authority to debar or suspend.

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

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

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

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

(3) Duty and Authority to Attempt to Settle Contract Controversies. Prior to commencement of an administrative review as provided in subsection (4), the chief officer must attempt to settle by mutual agreement a contract controversy brought under this section. The chief officer shall have the authority to approve any settlement reached by mutual agreement.

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

(5) Notice of Decision. A copy of the decision under subsection (4) of this section and a statement of appeal rights under Section 4230(6) shall be mailed or otherwise furnished immediately to all parties participating in the administrative review proceedings. The chief officer must also post a copy of the decision at a time and place communicated to all parties participating in the administrative review, and such posted decision must indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section 4230 (6).

(6) Finality of Decision. A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected requests a further administrative review by the Procurement Review Panel under Section 4410 (1) within ten days of the posting of the decision in

accordance with Section 4230 (5). The request for review must be directed to the chief officer who shall forward the request to the Procurement Review Panel and must be in writing setting forth the reasons why the person disagrees with the decision of the chief officer. The person may also request a hearing before the Procurement Review Panel.

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

SUBARTICLE 2.

REMEDIES

SECTION 4310. Solicitations or awards in violation of the law.

(1) Applicability. The provisions of this section apply where it is determined by either the chief officer or the Procurement Review Panel, upon administrative review, that a solicitation or award of a contract is in violation of this Procurement Policy or other applicable provisions of law. The remedies set forth herein may be granted by either the chief officer after review under Section 4210 or by the Procurement Review Panel after review under Section 4410(1).

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

(a) canceled;

(b) revised to comply with this Procurement Policy or other applicable provision of law and rebid; or

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

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

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

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

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

SECTION 4320. Contract controversies.

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

SECTION 4330. Frivolous protests.

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

such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation.

(2) Sanctions for Violations. If a request for review, protest, pleading, motion, or other document is signed in violation of this subsection on or after appeal to the Procurement Review Panel, the Procurement Review Panel, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the protest, pleading, motion, or other paper, including a reasonable attorney's fee.

SUBARTICLE 3.

REVIEW PANEL

SECTION 4410. Procurement Review Panel.

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

Finality. The decision of the Procurement Review Panel is final as to administrative review and its decision may be appealed to the circuit court under the provisions of the South Carolina Administrative Procedures Act.

ARTICLE 19.

INTERGOVERNMENTAL RELATIONS

SUBARTICLE 1.

APPLICATION

SECTION 4610. Application

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

ARTICLE 21.

ASSISTANCE TO MINORITY BUSINESSES

SECTION 5010. Definitions of terms used in this article.

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

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

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

(a) "Socially disadvantaged individuals" means those individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group, without regard to their individual qualities. Such groups include, but are not limited to, Black Americans,

Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian Pacific Americans, and other minorities to be designated by MTCECA.

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

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

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

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

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

SUBARTICLE 3.

ASSISTANCE TO MINORITY BUSINESSES

SECTION 5210. Statement of policy and its implementation.

(1) Statement of Policy. MTCECA recognizes that business firms owned and operated by minority persons have been historically restricted from full participation in our free enterprise system to a degree disproportionate to other businesses. MTCECA believes that it is in the best interest of MTCECA to assist minority-owned businesses to develop fully as a part of the policies and programs that are designed to promote balanced economic and community growth throughout the State. MTCECA, therefore, wishes to ensure that those businesses owned and operated by minorities are afforded the opportunity to fully participate in the overall procurement process of MTCECA. MTCECA, therefore, takes this leadership role in setting procedures that will result in awarding contracts and subcontracts to minority business firms in order to enhance minority capital ownership, overall state economic development and reduce dependency on the part of minorities.

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

SECTION 5220. Duties of the chief officer.

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

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

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

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

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

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

- (a) Number of minority firms solicited;
- (b) Number of minority bids received; and
- (c) Dollar amount of minority bids awarded.

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

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