

**PROCUREMENT
APPENDIX D**

**SOUTH CAROLINA'S PROCUREMENT CODE COMPARED TO
NASPO'S RECOMMENDED ESSENTIAL ELEMENTS OF A
PROCUREMENT SYSTEM**

Appendix D
South Carolina's Procurement Code Compared to NASPO's Recommended
Essential Elements of a Procurement System

Recommended Policy ¹	South Carolina Documented Policy ²	Comments
Organizational Structure		
Establish a central procurement office headed by a Chief Procurement Official	✓	
Establish an entity responsible for the establishment of rules and procurement policy	✓	
Authorize delegation of purchase authority and authority to monitor all delegated purchases	✓	
Competitive Process		
State that all procurements above a certain dollar amount be conducted through formal competition	✓	
Require rules specifying limits on sole-source procurement	✓	
Prohibit most favored customer and local preference rules		The Procurement Code provides preferences for vendors who are residents of South Carolina or whose products are made, manufactured, or grown in South Carolina; additionally, there is a United States product preference
Establish an administrative process for vendor challenges to solicitations and awards	✓	

Sources:

¹ Extracted from essential elements of a government procurement operation, *State and Local Government Purchasing*, 5th Edition, 1997, published by the National Association of State Purchasing Officials.

² Based on the State of South Carolina Consolidated Procurement Code, June 1997, except where noted in the comments section.

Recommended Policy ¹	South Carolina Documented Policy ²	Comments
Competitive Process, Continued		
Prohibit the acceptance of gifts or gratuities	✓	Provided for in the Ethics Government Accountability and Campaign Reform Act. According to the code, agencies are permitted to accept gifts-in-kind of architectural and engineering services, and items of construction valued less than \$250,000
Planning and Scheduling		
Direct the central procurement office to maintain a central procurement information system		Central procurement's system only tracks MMO's procurement activity
Require that the central purchasing office participate in overall procurement planning	✓	
Direct client agencies to submit data on requirements to the central procurement office	✓	
Specifications		
Prohibit use of restrictive clauses	✓	
Authorize the central procurement office to write and enforce specifications, and to delegate the responsibility where appropriate	✓	
Encourage use of performance specifications	✓	Provided for in the South Carolina State Procurement Regulations
Use advisory committees to establish and modify standards and specifications	✓	

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Recommended Policy ¹	South Carolina Documented Policy ²	Comments
Specifications, Continued		
Direct that specifications be written to encourage full competition	✓	
Environmental Issues		
Require reduction or elimination of the use of disposable products	✓	Pertaining to packaging and plastics, covered in the South Carolina Solid Waste Policy and Management Act of 1991
Authorize the procurement of refurbished or re-manufactured equipment with warranties	✓	Regarded as a typical procurement
Encourage use of life cycle factors as evaluation criteria	✓	South Carolina Conservation and Efficiency Act of 1992 (Energy Act) requires life cycle consideration in procurement of any energy using goods
Require procurement of recycled paper and paper products where feasible	✓	Provided for in the South Carolina Solid Waste Policy and Management Act of 1991
Restrict purchase of products manufactured with or containing chlorofluorocarbons	✓	Provided for in the South Carolina Solid Waste Policy and Management Act of 1991
Competition—Solicitations and Methods		
State that formal competition is the preferred method of procurement above an established dollar amount	✓	

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Competition—Solicitations and Methods, Continued		
Require documented justifications for use of methods outside of formal competition	✓	
Grant administrative discretion for requiring bid and performance bonds	✓	Only for construction contracts, others at procurement officers discretion
Require the maintenance of a comprehensive procurement file including responses to solicitations and vendor performance records	✓	Only vendor's inadequate performance records are maintained
Authorize waiver of minor irregularities and require rules in governing mistakes in quotations, bids, and proposals	✓	
Authorize rejection of any or all bids or proposals	✓	
Authorize pre-qualification of vendors and products	✓	
Encourage competition in small purchases		Only above \$1,500
Require rejection of late bids	✓	
Require rules governing telephone, electronic, or facsimile bids and proposals		Legislature has not yet approved electronic signatures
Authorize progress and installment payments	Partial	Able to authorize progress payments for MBEs. Otherwise at State's discretion
Require public opening of responses to formal competition	✓	

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Recommended Policy ¹	South Carolina Documented Policy ²	Comments
Competition—Solicitations and Methods, Continued		
Authorize the use of criteria in addition to price in evaluation and award when criteria is stated in the solicitation	✓	
Provide for prompt administrative judgment of bid protests and appeals	✓	
Noncompetitive and Limited Competition Methods		
Define emergency and sole source competition	✓	
Require written determination of the condition of emergency and sole source procurement	✓	
Authorize the chief procurement official have final determination of the waiver to conduct a formal competitive procurement		In addition to the chief procurement official, the head of a Purchasing Agency is also authorized to waive formal competitive procurement
Require rules governing the handling of unsolicited offers		The current Procurement Code does not address unsolicited offers
Require negotiation on non-competitive procurements and submission of price or cost analyses under noncompetitive negotiations	✓	

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Bid and Proposal Evaluation		
Provide that award made through formal competition be made to the responsible and responsive bidder or offeror providing the best value while meeting the solicitation's criteria	✓	
Require that the central procurement authority establish rules governing the evaluation or award process	Partial	MMO establishes rules pertaining to MMO's evaluation and award process, as well as broad parameters, based on Code, for agencies to follow, but agencies can define their own processes
Require rules that define, authorize, and limit the use of multiple, partial, progressive or incremental awards and awards by line items		The current Procurement Code does not address rules defining, authorizing, and limiting the use of multiple, partial, progressive or incremental awards by line items
Require that solicitations set forth the only criteria to be used in the evaluation of bids or proposals for award	✓	
Contracting for Services		
Require rules to assure future contracts are not awarded to contractors that have performed unsatisfactory	✓	
Require that the central purchasing office report annually on the number, value, and nature of contractual services		The current Procurement Code does not require an annual report on the number, value, and nature of contractual services

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Contracting for Services, Continued		
Provide for review of service contracts by the personnel office		The current Procurement Code does not require review of service contracts by the personnel office
Require rules on the independence of the personal service contractor to employees of the jurisdiction	✓	Provided for in the Ethics Government Accountability and Campaign Reform Act
Require using agency to evaluate a contractor's performance		The current Procurement Code does not require a using agency to evaluate a contractor's performance
Cooperation and Cooperative Procurement		
Authorize cooperative procurement between and among state governments, local governments, and with the federal government		Permits cooperative purchasing with state and local governmental bodes, however, South Carolina vendors must to used to distribute goods. Agencies cannot "piggyback" on other SC state agency contracts.
Require that procurements be made in accordance with public procurement principles of open and equitable competition		The current Procurement Code does not mandate that procurements be made in accordance with public principles of open and equitable competition
Require that agreements define the conditions of use	✓	

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Quality Assurance		
Require the central procurement office establish and administer a formal quality assurance program, including inspection and testing		The current Procurement Code does not mandate the establishment of a formal quality assurance program
Authorize the debarment and suspension of vendors and contractors	✓	
Authorize the inspection of a contractor's or prospective contractor's plant	✓	
Authorize the audit of a contractor's or subcontractor's records	✓	
Authorize the central procurement office to participate in cooperative testing programs with their jurisdictions		The current Procurement Code does not authorize the participation in cooperative testing programs with other jurisdictions
Authorize the central procurement office to use agency laboratories or testing facilities, or contract with outside sources		Practiced but not mandated by the current Procurement Code
Authorize the use of test data developed independently by other jurisdictions		Practiced but not mandated by the current Procurement Code

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Contract Administration		
Require rules that govern contract administration		The current Procurement Code does not require the establishment of rules that govern contract administration, but MMO has established policies and procedures for central procurement's contracts
Central procurement office should institute a comprehensive program to obtain timely and measurable feedback from client agencies		Practiced but not mandated by the current Procurement Code
Procurement Program Integrity and Credibility		
Provide public access to the procurement process	✓	
Establish criminal penalties for attempting to influence awards		The current Procurement Code does not establish criminal penalties
Establish personal liability for employees who violate applicable statutes, rules, or procedures		The current Procurement Code does not establish personal liability
Authorize the central procurement office to require submission of cost and pricing data and authorize the audit of this data where competition is inadequate or unavailable	✓	

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Procurement Program Integrity and Credibility, Continued		
Authorize the central procurement office to resolve protests, complaints, and disputes through an established procedures	✓	
Publish a code of ethics for the performance of those associated with government contracts		MMO and majority of agencies practice, but the current Procurement Code does not require the distribution of a code of ethics
Manuals		
Require agencies with delegated procurement authority to publish their own internal procurement procedures	✓	MMO must review and approve
Professional Development		
Specify training and procurement experience for prospective employees		The current Procurement Code does not establish specific training and procurement experience for prospective employees. MMO does provide annual training courses to procurement staff state-wide
Establish a policy to recruit personnel for the central procurement office from agency procurement staffs		The current Procurement Code does not establish a policy to recruit personnel for the central procurement office from agencies
Support professional certification and encourage professional staff to qualify for certification	✓	

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