

# Current Procurement Code Exemptions

Last Revised January 3, 2013

## Key to Columns

**NAME:** This column provides an unofficial, concise descriptive identifier for each exemption. The name does not accurately capture the scope of the exemption.

**DATE:** [year / month / day] This column gives the dates when action was taken regarding the exemption. For exemptions created by statute, a date represents the date that a law was enacted. For exemptions granted by the Board, a date represents the date the Board voted to approve the exemptions. Unless otherwise noted, these dates are also the effective dates of the exemption. When multiple dates are listed, each date represents an instance in which the exemption was acted upon, either by the General Assembly or the Budget and Control Board.

**EXEMPTION TEXT:** This column contains the operative text of the exemption. Depending on its source, the text is taken either from a statute, the minutes of a Board meeting, or an agenda item approved by the Board at a meeting.

**NOTES:** This column contains assorted information useful in understanding or applying the exemption.

## **General Notes**

1. This list, including explanatory notes, is intended as a reference tool only. This list is not the agency's official record of the exemptions granted by the Board or the General Assembly. This list has not been approved by the Budget and Control Board. A copy of this list is posted on the internet at [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov). It has been posted as a Microsoft Excel spreadsheet and in portable document format (PDF).
2. As exemptions were created, MMO's auditing office maintained an internal, chronological, numbered list of exemptions. By long usage, these numbers became a short hand reference for the exemptions. The previously used chronological numbering system has been abandoned in favor of descriptive names.

NAME	DATE	EXEMPTION TEXT	NOTES
<b>Accreditation Expenses</b>	1986.04.22	The Board exempted “[e]xpenses of evaluation committees required for institutions of higher learning in order to maintain accreditation (i.e., Southern Association of Colleges and Schools)” from the purchasing procedures of the Procurement Code”	
<b>Advertisements - Professional Publications</b>	1986.04.22	The Board exempted “Advertisements in professional journals or publications” from the “purchasing procedures of the Procurement Code.”	
<b>Advertising</b>	1986.04.22	The Board exempted “Advertising time or space in newspapers, on radio or television (Note: Consultants obtained to handle advertising campaigns for agencies such as PRT and State Development Board are not exempted.)” from the “purchasing procedures of the Procurement Code.”	The State Development Board became the Department of Commerce in 2005. 2005 Act No. 56 (amending § 1-30-25 to substitute “Department of Commerce” for “State Development Board”).
<b>Animals - Research</b>	1986.04.22	The Board exempted “Animals acquired for specific or general research, testing or experimentation” from the “purchasing procedures of the Procurement Code.”	
<b>Art &amp; Artifacts</b>	1981.07.30 2006.06.13	“The following exemptions are granted from this chapter: (10) South Carolina Arts Commission and the South Carolina Museum Commission for the purchase of one-of-a-kind items such as paintings, antiques, sculptures and similar objects. Before a governmental body procures the objects, the head of the purchasing agency shall prepare a written determination specifying the need for the objects and the benefits to the State. The South Carolina Arts Commission shall review the determination and forward a recommendation to the board for approval....”	[1] Quoted from § 11-35-710(10). [2] Always consult the annual appropriations act for a related recurring proviso. In the 2008 act, the proviso read: “(BCB: Procurement of Art Objects) Before any governmental body, with the exception of the South Carolina Museum Commission, the Budget and Control Board and the South Carolina Hunley Commission as defined under the South Carolina Consolidated Procurement Code, procures any art objects such as paintings, antiques, sculptures, or similar objects above \$1,000, the head of the Purchasing Agency shall prepare a written determination specifying the need for such objects and benefits to the State. The South Carolina Arts Commission shall review such determination for approval prior to any acquisition.” 2008 S.C. Act No. 310, Part IB, § 80A.5
<b>Art &amp; Artifacts - Confederate Relic Room</b>	1985.08.27	“The Board, in accord with Procurement Code §11-35-710, exempted from the purchasing procedures the acquisition of historical artifacts, weapons, flags, firearms, etc., which are rare and reasonably priced in the judgment of the Confederate Relic Room and Museum staff.”	Always consult the annual appropriations act for a related recurring proviso. In the 2008 act, the proviso read: “(BCB: Procurement of Art Objects) Before any governmental body, with the exception of the South Carolina Museum Commission, the Budget and Control Board and the South Carolina Hunley Commission as defined under the South Carolina Consolidated Procurement Code, procures any art objects such as paintings, antiques, sculptures, or similar objects above \$1,000, the head of the Purchasing Agency shall prepare a written determination specifying the need for such objects and benefits to the State. The South Carolina Arts Commission shall review such determination for approval prior to any acquisition.” 2008 S.C. Act No. 310, Part IB, § 80A.5
<b>Art &amp; Artifacts - State Museum</b>	1991.07.17	“The Board, in accord with Code Section 11-35-710, exempted from the purchasing procedure of the Consolidated Procurement Code the following, as requested by the State Museum Commission: (a) Historical artifacts, to include both current, specific items and objects of future historical significance; (b) Scientific specimens, to include study skins, skeletal mounts, taxidermy mounts, models, fossils, rocks and minerals, and other such materials representative of, or illustrative of, the natural world; (c) Artworks, to include examples of fine art, decorative art, and folk art and craft work; (d) Collection disciplines, to include cultural history, science and technology, art and natural history; and (e) Exhibits, to include design and fabrication and specialty materials not commercially available that are used as components of exhibits.”	[1] Intended to expand upon exemption provided in Section 11-35-710. [2] Always consult the annual appropriations act for a related recurring proviso. In the 2008 act, the proviso read: “(BCB: Procurement of Art Objects) Before any governmental body, with the exception of the South Carolina Museum Commission, the Budget and Control Board and the South Carolina Hunley Commission as defined under the South Carolina Consolidated Procurement Code, procures any art objects such as paintings, antiques, sculptures, or similar objects above \$1,000, the head

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			of the Purchasing Agency shall prepare a written determination specifying the need for such objects and benefits to the State. The South Carolina Arts Commission shall review such determination for approval prior to any acquisition.” 2008 S.C. Act No. 310, Part IB, § 80A.5
<b>Athletic Apparel</b>	2009.12.15	“Pursuant to Section 11-35-710, the Board grants to Institutions of Higher Education, as defined in Section 59-101-10, an exemption from both the Procurement Code’s purchasing procedures and from purchasing through the chief procurement officer for entering and renewing revenue generating contracts for the acquisition of athletic apparel or brand name equipment that is used personally by athletes, coaches, and athletic department staff in practice and competition, but only after such institutions have determined in writing, using comparative data, that the contracts provide to the institution equivalent or higher total value than similar contracts held by peer institutions within the same intercollegiate athletic conference. The total duration of such a contract including option or renewal terms, may not exceed ten (10) years.”	
<b>Athletic Funds</b>	1981.07.30 2006.06.13	“The following exemptions are granted from this chapter: (6) expenditure of funds at State institutions of higher learning derived wholly from athletic or other student contests, from the activities of student organizations and from the operation of canteens and bookstores, except as such funds are used for the procurement of construction, architect-engineer, construction-management and land surveying services....”	[1] Quoted from § 11-35-710(6). [2] To be exempt, contract must be wholly funded from qualifying funds. [3] Always consult the annual appropriations act. Historically, it includes provisos which are related to this topic and supersedes other laws during the applicable year. For example, the 2008 Annual Appropriations Act included Proviso 89.9 (“Notwithstanding other provisions of this act, funds at state institutions of higher learning derived wholly from athletic or other student contests, from the activities of student organizations, and from the operations of canteens and bookstores, and from approved Private Practice plans at institutions and affiliated agencies may be retained at the institution and expended by the respective institutions only in accord with policies established by the institution’s Board of Trustees.”) and Proviso 89.13 (“Notwithstanding any other provisions of this act, funds at technical education colleges derived wholly from the activities of student organizations and from the operations of canteens and bookstores may be retained by the college and expended only in accord with policies established by the respective college’s area commission and approved by the State Board for Technical and Comprehensive Education.”). 2008 S.C. Act No. 310, Part IB, §§ 89.9 & 89.13.
<b>Books &amp; Periodicals</b>	1981.07.30 2006.06.13	“The following exemptions are granted from this chapter: (11) published books, periodicals, and technical pamphlets.”	Quoted from § 11-35-710(11).
<b>Child Support Enforcement (2)</b>	2001.09.17	“In accordance with South Carolina Code Section Ann. 11-35-710, the Board granted the South Carolina Department of Social Services an exemption from the purchasing procedures of the Procurement Code for those supplies, services, and information technology, as defined in Code Section Ann. 11-35-310, necessary for DSS to develop and complete a statewide automated Child Support Enforcement System (CSES) and a State Disbursement Unit (SDU). This includes exemption from the purchasing authority of the Chief Procurement Officer whose area of responsibility would cover such procurements. The exemption is available only for procurements entered into before the date the state achieves federal certification of the statewide system and final approval of the State Disbursement Unit. The exemption is granted because of the extraordinary circumstances created by the assessment of federal penalties against the State of	

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		South Carolina. With regard to this item, Senator Leatherman asked whether the Procurement Code exemption would apply only to the Unisys litigation. Governor Hodges replied that it would apply only to the Unisys litigation matter.”	
<b>Commerce - Railways</b>	1981.07.30 1993.07.01 2006.06.13	“The following exemptions are granted from this chapter: (4) Division of Public Railways of the Department of Commerce....”	Quoted from § 11-35-710(4).
<b>Commerce Dept - consultants abroad</b>	1989.12.20	“The Board, in accord with Code Section 11-35-710 and as recommended by the Division of General Services, approved the following exemptions from the purchasing policies and procedures of the Procurement Code: (b) the following State Development Board procurements: . . . all part-time international business consultants who represent the State of South Carolina in foreign countries.”	The State Development Board became the Department of Commerce in 2005. 2005 Act No. 56 (amending § 1-30-25 to substitute “Department of Commerce” for “State Development Board”).
<b>Commerce Dept - Frankfurt Office</b>	1989.12.20	“The Board, in accord with Code Section 11-35-710 and as recommended by the Division of General Services, approved the following exemption from the purchasing policies and procedures of the Procurement Code: (b) the following State Development Board procurements: all procurements paid from the Frankfurt, West Germany office for the use of that office; leases for office space in foreign countries;” *	The State Development Board became the Department of Commerce in 2005. 2005 Act No. 56 (amending § 1-30-25 to substitute “Department of Commerce” for “State Development Board”).
<b>Commerce Dept - Marketing Donations</b>	1991.02.12	“The Board, in accord with §11-35-710 of the Consolidated Procurement Code, granted an exemption (not including State appropriated funds) from the purchasing procedures of the expenditure of private sector donations by the Development Board used to sponsor special marketing events.”	The State Development Board became the Department of Commerce in 2005. 2005 Act No. 56 (amending § 1-30-25 to substitute “Department of Commerce” for “State Development Board”).
<b>Commerce Dept - Tokyo Office</b>	1983.12.20	“The Board agreed to exempt all expenditures paid from the Tokyo office operated by the Development Board, the Ports Authority, and the Department of Agriculture from the requirements of the Procurement Code.”	The State Development Board became the Department of Commerce in 2005. 2005 Act No. 56 (amending § 1-30-25 to substitute “Department of Commerce” for “State Development Board”).
<b>Commercial Resale</b>	1981.07.30 2006.06.13	“The following exemptions are granted from this chapter: (8) articles for commercial sale by all governmental bodies.”	Quoted from § 11-35-710(8).
<b>Commodity Boards</b>	1985.07.01	“(AGRI: Commodity Boards Expenditures) Expenditures made for the various Commodity Boards (as budgeted under other funds in Program IV.B. Marketing Services: Commodity Boards) are exempt from regulations under the Procurement Act of 1981.”	[1] This exemption is created by a recurring proviso of the annual appropriations act. Accordingly, the act should be checked each year. [2] The text is quoted from 2007 S.C. Act No. 117, Part IB, § 22.3. In 2008, identical text appears in 2008 S.C. Act No. 310, Part IB, § 34.3.
<b>Conference Sites</b>	1988.12.13	“The Board, in accord with Code Section 11-35-710, approved an exemption from procurement procedures for the acquisition process for conference facilities, on the condition that staff implements guidelines for the process which are designed to result in a greater geographic spread of conference sites in-State.”	[1] According to the minutes, General Services’ recommendation provided that “[f]acilities are defined to be lodging and related services normally furnished by hotels/motels.” [2] General Services adopted “Guidelines and Justification form for Procurement of Conference Facilities” on December 20, 1989. Those guidelines are attached to MMO Form No. 138.
<b>Corrections - Canteen Funds</b>	1982.08.24	“The Board exempted the following items from the requirements of the Consolidated Procurement Code. . . : (2) expenditure of funds by the Department of Corrections derived wholly from its canteen operations.” <sup>1</sup>	
<b>Counter Drug Program (1122 Program)</b>	2000.06.21	“The Board, under the authority of Section 11-35-710 of the Consolidated Procurement Code, granted an exemption to allow all state law enforcement programs to procure law enforcement equipment and supplies for counter drug activities through Federal procurement channels under the United States Government’s State and Local Law Enforcement Equipment Procurement Program created by the National Defense Authorization Act of 1994 provided, however, that the	[1] The 1122 “Counterdrug” Program is for purchasing equipment for counterdrug activities. Participation by state and local governments is authorized by Title 10, Section 381 of the US Code of Laws (Public Law 103-160). The US General Services Administration publishes a catalog which explains the

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		law enforcement agency must certify that the prices paid under this program are advantageous to the State.”	1122 Program and delineates those products which may be procured under the program. Each participating state must designate a State Point Of Contact (SPOC) to administer the state’s activities under the program. SPOCs are responsible for receiving all orders from state and local law enforcement entities and for determining that the items will be used for counterdrug activities. Additional information regarding the program, as well as the catalog, are available at <a href="http://www.gsa.gov/1122program">http://www.gsa.gov/1122program</a> [2] Governor Campbell named the Greenville County Sheriff’s Department as South Carolina’s SPOC.
<b>Disaster Recovery (833 Program)</b>	2007.12.11	<p>“The Board, pursuant to South Carolina Code Section 11-35-710, granted all governmental bodies an exemption to acquire any supplies and services through appropriate federal contracts for disaster recovery purchasing through the US General Services Administration. This exemption may be used only if:</p> <p>(1) the products and services are not available through an existing state term contract [Section 11-35-310(35)];</p> <p>(2) the acquisition complies with 48 C.F.R. Subpart 538.71 and 40 U.S.C. § 502(d);</p> <p>(3) the federal contract to be used has been approved and made accessible by the Materials Management Office or the Information Technology Management Office; and,</p> <p>(4) the products and services are to be used to facilitate recovery from either (a) a major disaster declared by the President under 42 U.S.C. 5 121 et seq., or (b) a terrorism, or nuclear, biological, chemical, or radiological attack declared a State of Emergency by the Governor.</p> <p>Products and services may be used to facilitate recovery only if they are necessary for and directly related to an urgent effort to return to conditions similar to those existing prior to the disaster or attack.</p> <p>Purchases allowed under this exemption shall not be made in advance of the disaster or attack except in limited circumstances and only if the purchase is (1) made through the Materials Management Office or the Information Technology Management Office, and (2) for a governmental body identified in the State EOP as part of one or more Emergency Support Functions, and (3) approved in advance by both the Director of the S.C. Emergency Management Division or his designee and the Materials Management Officer or his designee. Governmental bodies must endeavor to give priority to GSA contractors from or with a presence in the State of South Carolina. The Materials Management Office shall maintain a list of the approved FSS contracts. All such purchases must be reported to MMO. MMO may cancel a governmental body’s authority to use this exemption.</p>	Additional program information is available at <a href="http://www.gsa.gov/disasterrecovery">http://www.gsa.gov/disasterrecovery</a>
<b>DOT &amp; DPS</b>	1981.07.30 1993.07.01 1996.06.05 2006.06.13	“The following exemptions are granted from this chapter: (1) The construction, maintenance, and repair of bridges, highways, and roads; vehicle and road equipment maintenance and repair; and other emergency-type parts or equipment utilized by the Department of Transportation or the Department of Public Safety.”	Quoted from § 11-35-710(1).
<b>Drug Card Program</b>	1988.06.28	“The Board, in accord with Section 11-35-710, exempted from the requirements of the procurement code procurement of pharmacy services by the South Carolina Retirement Systems under the prescription drug card program where system members have freedom of choice to select from among participating pharmacies.”	[1] Exemption applies to State Health Plan, which is no longer a subdivision of the Retirement System. [2] General Services recommendation approval on fact that program calls for open enrollment of pharmacists willing to participate with reimbursement being based on the average wholesale price of prescribed drugs and system members

NAME	DATE	EXEMPTION TEXT	NOTES
			having freedom to choose their pharmacist from an approved list.
<b>DSIT-Telecom Services</b>	1993.07.14	“The Board, in accord with Code Section 11-35-710, exempted the acquisition of all local and long-distance telecommunications services for or on behalf of the State of South Carolina from the requirement that they be purchased through the respective chief procurement officer’s area of responsibility and from the purchasing procedures of the Consolidated Procurement Code, until further Board action; and authorized the Division of Information Resource Management to secure such telecommunications services and equipment upon such terms and conditions as are regarded by it to be appropriate.”	[1] Exemption covers only “local and long-distance telecommunications services”. [2] The Board’s Division of State Information Technology was formerly known as the Division of Information Resource Management (DIRM). [3] Since 1989, Section 1-11-430, which is not itself an exemption, has required that state government “be treated as a single enterprise for purposes of securing and utilizing local and long distance telecommunications equipment and services” and that “[t]he State Budget and Control Board shall secure all telecommunications equipment and services for the state government enterprise under terms it considers suitable . . .”
<b>Edisto Development Authority</b>	1992.07.01	“Except for the provisions of Subarticle 3, Article 21, Chapter 35 of Title 11, in exercising the powers authorized in this chapter the authority is exempt from Title 11 of Chapter 35.”	Quoted from Section 13-21-30. See paragraphs 5 and 15.
<b>Educational Materials Copyrighted (2)</b>	1994.05.10	“The Board amended an existing exemption to the requirements of the Procurement Code to read as follows: The procurement of copyrighted educational films, filmstrips, slides and transparencies, CD ROM documents, data bases, computer assisted instructional materials, interactive video programs and other related materials made available by information technology that can only be obtained from the company providing the information or service.” <sup>1</sup>	[1] Exemption limited to educational information, protected by copyright, “that can only be obtained from the company providing the information or service.” [2] Original exemption (04/27/1982) included only “copyrighted education films, filmstrips, slides and transparencies.”
<b>Environmental Remediation (2)</b>	1995.10.24	“The Board, in accord with Code Section 11-35-710, exempted environmental remediation projects from the purchasing policies and procedures of the Procurement Code, provided that these contracts will be procured under the authority of and in accordance with procedures established by the Office of State Engineer with the work effort to be monitored by the State Engineer.”	
<b>Forestry Comm - Catalog Purchases</b>	2000.04.11	“The Board approved an exemption from the Consolidated Procurement Code for the State Forestry Commission to procure fire equipment and related supply items from the Wildlife (sic) Protection Equipment and Supplies catalog and subsequent editions through the Cooperative Fire Program of the U.S. Forestry Service.”	The Wildfire Protection Equipment and Supplies Catalog is now called the Wildland Fire Equipment Catalog. This catalog is the basic supply publication for use by the U.S. Forest Service and other Forest Service sponsored participants in the Governmentwide wildland firefighting effort. The catalog is issued annually and contains descriptions and ordering data for wildfire protection equipment and supplies managed by the U.S. General Services Administration (GSA).The program is overseen by the GSA Fire Program Coordinator. The catalog and information regarding the program are available at <a href="http://www.gsa.gov/fireprogram">http://www.gsa.gov/fireprogram</a> .
<b>Fuel Cards</b>	1982.04.27	“The Board exempted the following from the purchasing procedures required under the Consolidated Procurement Code as authorized by Section 11-35-710: (4) oil company credit card purchases for gas, oil, and jet fuel charges only;” <sup>1</sup>	
<b>Fuel Oil &amp; Diesel Fuel</b>	1982.08.24	“The Board exempted the following items from the requirements of the Consolidated Procurement Code. . . : (4) fuel oil and diesel oil (the \$2,500 limit is waived; however, competition should be obtained whenever possible).” <sup>1</sup>	
<b>General Services Sales</b>	1982.08.04	The Board exempted “services and/or supplies provided by the Division of General Services to public procurement units from the requirements of [the Consolidated Procurement Code.]” <sup>1</sup>	

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<b>Gifts to Gov't</b>	1992.05.12	"The Board delegated to the Director of the Division of General Services the authority to grant exemptions from the Consolidated Procurement Code to permit agencies to accept gifts [in the form of construction] with a total value of \$100,000 or less, on the condition the five-year budgetary impact statement is positive." n	
<b>Gifts to Gov't</b>	1993.06.16	"Each state agency and institution may accept gifts in kind for architectural and engineering services and construction of a value less than two hundred fifty thousand dollars with the approval of the Commission of Higher Education or its designated staff, the Director of the Division of General Services, and the Joint Bond Review Committee or its designated staff. No other approvals or procedural requirements, including the provisions of Section 11-35-10, may be imposed on the acceptance of such gifts." n	Quoted from Section 2-47-56. Section 11-35-475, which was similarly worded, was repealed by 2006 Act No. 376, § 63, effective June 13, 2006.
<b>Governor's Mansion - Upholstering</b>	1985.10.09	"The Board exempted the procurement of upholstering supplies and services by the Governor's Mansion Complex from the requirements of the Procurement Code....	See also the exemptions of 01/16/86 and § 10-3-30.
<b>Governor's Mansion - Interior Design</b>	1986.01.16	"The Board exempted the Governor's Mansion Committee from the requirements of the State Procurement Code concerning matters of interior design for the three houses in the Governor's Mansion Complex and the Old Towne House at Charles Towne Landing and exempted donated labor and materials on these facilities, notwithstanding any other provisions of the law."	[1] Reference exemption from "bidding and purchasing procedures of the Division of General Services" provided by Section 10-3-30(g), which was enacted prior to the Consolidated Procurement Code. [2] This is the second exemption for the Governor's Mansion. First was 10/09/85.
<b>Governor's Mansion Commission</b>	2005.06.10	"Accept and disburse funds which must be utilized to purchase articles of historical, artistic, decorative, or intrinsic permanent value for use in the Governor's Mansion and other buildings owned by the State of South Carolina in the two blocks surrounded by Lincoln, Laurel, Gadsden, and Calhoun Streets in the City of Columbia. Because of the nature of the articles purchased, they are exempt from the bidding and purchasing procedures of the Division of General Services applicable to other state agencies if they are in the categories of articles described in this item. All receipts and disbursements must be made with the approval of the commission. The funds and purchases made with them and gifts made pursuant to this section are the property of the State of South Carolina." (emphasis added)	[1] This text is quoted from section 10-3-30(g), which was enacted prior to the Consolidated Procurement Code. [2] Title 10, Chapter 3 includes other duties relevant to this exemption, e.g., a duty to "[a]dvis[e] State officials and others on matters pertaining to the embellishment of the Governor's Mansion and the Lace House" and to "[m]ake an inventory to be submitted to the Budget and Control Board as soon as practicable after being organized and each year thereafter of all nonexpendable property under its custody."
<b>Grant Specified Procurements</b>	1994.03.22	The Board, in accordance with Code Section 11-35-710, exempted procurements made by a requesting agency for the purchase of grant-specified and approved major equipment, subcontracts, and consultants the agency determines to be essential to the successful completion of the grant-funded project if those procurements are made in accordance with procedures approved by the Office of General Services on an agency-by-agency basis."	[1] Exemption limited to agencies for which MMO has approved the required procedure. [2] "'Grant' means the furnishing <i>by the State or the United States Government</i> of assistance, whether financial or otherwise, to a person to support a program authorized by law." S.C. Code Ann. § 11-35-310(19) (emphasis added). Accordingly, this exemption applies only to grants from public entities.
<b>HHS Grant Awards</b>	1983.09.13	"The Board approved the reference exemptions in accord with the Procurement Code Section 11-35-710, upon the recommendation of the Division of General Services." General Services recommended "that the following be exempted from the requirements of the Procurement Code in accordance with Code Section 11-35-710: (a) the Health and Human Services Commission from competitive requirements of the Code when placing funds with recipients as defined in Section 11-35-310(18) [defining "governmental body"] of the Code, in administering Title XIX of the Social Security Act (Medicaid), including early periodic screening, diagnostic and treatment program, community long-term care system, and social services block grant program, provided that recipients receiving such funds shall follow the requirements of the [Consolidated Procurement] Code in the expenditure of such funds. . ."	See also 07/29/86 for Title XIX Provider contracts.

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<b>HHS - Continuum of Care &amp; Area Agencies on Aging</b>	1998.06.18	“The Board, in accord with Section 11-35-710 of the Consolidated Procurement Code, granted an exemption for the Department of Health and Human Services, in coordination with other appropriate agencies and organizations, for the development of a coordinated system of services, as required by Proviso 72.58 [of the 1997 Act No. 155], which provides for a continuum of long term care services for elderly individuals and their families through the distribution of applicable funds to Area Agencies on Aging.”	Section 11-35-40(2) provides that the code “does not apply to . . . the issuance of grants . . .” As defined by the Code, the term “grant” “means the furnishing by the State or the United States government of assistance, whether financial or otherwise, to a 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, information technology, or construction. A contract resulting from such an award must not be considered a grant but a procurement contract.” S.C. Code Ann. § 11-35-310(19).
<b>HHS - Title XIX Provider Contracts</b>	1986.07.29	“The Board exempted from the requirements of the Procurement Code service provider contracts awarded by the Health and Human Services Finance Commission funded from Federal Title XIX (Medicaid) which are for the direct provision of services to eligible clients where each client has freedom of choice to select a provider.”	[1] Agency requested exemption based on the freedom of choice requirement appearing in 42 CFR § 431.51. [2] General Service’s recommendation did not extend to all contracts funded with Medicaid dollars which include training, consultants, research of reimbursement technology, accounting services and others that are not providers of services directly to clients. [3] See related exemption on 09/13/83.
<b>HMOs</b>	1985.06.25	“The Board exempted health maintenance organizations (HMOs) from the requirements of the bid process under the Procurement Code . . .”	
<b>Home Health Agency - DHEC</b>	1995.06.29	“The department [DHEC] may enter into public and private joint partnerships or enter into other appropriate cooperative agreements or arrangements or negotiate and effect these partnerships and agreements to include the sale of the entity and/or the transfer of licenses held by the department or its subdivisions to other qualified providers, if appropriate, when doing so would result in continued high quality patient care, continued provision of services to indigent patients, assurance of the employment of the department’s home health employees, and provision of home care services adequate to meet the needs of the State. The department may facilitate the negotiation, contracting, or transfer of these activities through licensure and without requirement of a Certificate of Need as set out in Section 44-69-75 and without regard to the Procurement Code, Section 11-35-10, et. seq. However, a sale of the entity is subject to the provisions of the Procurement Code.”	Text quoted from a portion of Section 44-69-30 (1995 Act No. 145, Part II, § 116.). Entire section must read to understand exemption.
<b>Home Health Services - DHEC</b>	1995.01.10	“The Board, in accord with the provisions of Code Section 11-35-710, exempted the Department of Health and Environmental Control from the requirements of the Consolidated Procurement Code for all contracts for home health services, on the condition that a written certification that this exemption will not adversely affect the Medicaid reform waivers is received from the Health and Human Services Finance Commission.”	
<b>Hunley Commission</b>	1996.05.16	“[W]ith respect to the Hunley project that the Hunley Commission shall be exempt from compliance with the provisions of Chapter 35 of Title 11.”	Quoted from Section 54-7-100.
<b>Instructional Seminars</b>	1983.03.08	“The Board exempted instructional training seminars offered by governmental bodies to state employees on a registration fee basis and those contractual consultant services necessary to provide the professional instruction for the seminars from the requirement to purchase these items through the respective chief procurement officer’s area of responsibility.”	
<b>Insurance - IRF</b>	1982.08.24	“The Board exempted the following items from the requirements of the Consolidated Procurement Code...: (5) contracts between the Insurance Reserve Fund and insurers and reinsurers for primary and reinsurance coverage.” <sup>1</sup>	[1] Limited by § 1-11-147 (“To underwrite automobile liability insurance provided by the board, the Budget and Control Board is authorized to either self-insure, purchase reinsurance, or use a combination of self-insurance and reinsurance. Should the board elect to purchase automobile liability reinsurance, the reinsurance shall be procured through a bid process in accordance with the South Carolina Consolidated Procurement



NAME	DATE	EXEMPTION TEXT	NOTES
			Code with a contract term not to exceed three years.”) added by 1999 Act No. 13. [2] Check relevant appropriation act. E.g., 2007 Act No. 117, , Part IB, § 63.58.
<b>Interagency Agreements (2)</b>	1994.03.22	“In accord with Section 11-35-710 of the Consolidated Procurement Code, [the Board] delegated to the Office of General Services the authority to exempt contracts between state government agencies under Section 11-35-4830 and 11-35-4840 for supplies or services provided a cost justification is submitted to the Office in advance. <i>The following types of contracts between state government agencies shall be exempt from the Consolidated Procurement Code and submission to General Services is not required: (1) agreements between state government agencies which are mandated by federal or state laws; and (2) services agreements between state government agencies for services authorized by that agency’s enabling legislation as its purpose, duty, or mission.</i> ”	The term “services” is defined by Section 11-35-310(29) as “the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements or services as defined in Section 11-35-310(1)(d).”
<b>JEDA</b>	1992.07.01	“Notwithstanding any provision of law or regulation to the contrary, and in accordance with its own procurement procedures and regulations as approved by the Budget and Control Board, which must, at a minimum, incorporate the provisions of Sections 11-35-5210 through 11-35-5270, inclusive, acquire, purchase, hold, use, improve, manage, lease, mortgage, pledge, sell, transfer, and dispose of any property, real, personal, or mixed, or any interest in any property, or revenues of the authority, including as security for notes, bonds, evidences of indebtedness, or other obligations of the authority. Except for the provisions of Sections 11-35-5210 through 11-35-5270, inclusive, in exercising the powers authorized in this chapter the authority is exempt from Title 11, Chapter 35. The authority has no power to pledge the credit and the taxing power of the State or any of its political subdivisions.”	[1] Language quoted from Section 41-43-90(E). [2] The Board approved JEDA’s procurement policies at its meeting of November 3, 1994. JEDA’s policies are an exhibit to the Board minutes.
<b>Licensing Exam Forms &amp; Services (2)</b>	1993.08.26	“The Board modified the exemption from the requirements of the Consolidated Procurement Code of printed examination forms used in the administration of state licensing examinations to read as follows: electronic and printed examination forms and their administration for State licensing examinations.”	
<b>Livestock</b>	1981.07.30 2006.06.13	“The following exemptions are granted from this chapter: (7) Livestock, feed and veterinary supplies....”	Quoted from § 11-35-710(7).
<b>Medical - Invasive Items</b>	1989.12.20	“The Board, in accord with Code Section 11-35-710 and as recommended by the Division of General Services, approved the following exemption from the purchasing policies and procedures of the Procurement Code: (a) the following medical items invasive to the human body which would be selected by a patient and doctor: implants, grafts, pacemakers, heart valves, joint replacements, organs, tissue, blood and blood components:”	
<b>Medical University Hospital Authority</b>	1999.06.30	“The board, as the governing body of the authority, has the powers granted the Board of Trustees of the Medical University of South Carolina under this chapter and the following powers: (3)(a) make contracts and have, hold, purchase, and lease real estate and personal property for corporate purposes; and sell and dispose of personal property and any buildings that are considered by it as surplus property or no longer needed and any buildings that it may need to do away with for the purpose of making room for other construction. These contracts are exempt from the South Carolina Consolidated Procurement Code and Regulations, but the authority must adopt a procurement policy requiring competitive bidding for construction contracts, which must be filed with and approved by the State Budget and Control Board:”	[1] Quoted from Section 59-123-60(E)(3)(a). [2] On May 1, 2000, the General Assembly added a reference to this exemption in the Procurement Code. Section 11-35-710(14) provides as follows: “The following exemptions are granted from this chapter: (14) Medical University Hospital Authority, if the Medical University Hospital Authority has promulgated a procurement process in accordance with its enabling provision.” [3] The Board approved a “Construction Procurement Policy for Medical University Hospital Authority” in May 2000.
<b>Midlands Authority (regional development agency)</b>	1992.07.01	“Except for the provisions of Section 11-35-5210 through 11-35-5270, inclusive, in exercising the powers authorized in this chapter the authority is exempt from Title 11, Chapter 35.”	Quoted from Section 13-19-30.

NAME	DATE	EXEMPTION TEXT	NOTES
<b>Midlands Technical College Enterprise Authority</b>	2004.04.26	“(B) For all matters associated with the Enterprise Campus, the authority is exempt from the South Carolina Consolidated Procurement Code, however, the authority shall adopt a procurement policy requiring competitive solicitations, and the policy must be filed with and approved by the State Budget and Control Board. The policy must include provisions for audit and recertification. (C) The authority is exempt from all regulations and general laws governing disposal of surplus government property.”	[1] Quoted from Section 59-53-1784. [2] On January 25, 2005, the Board approved procurement procedures pursuant to 59-53-1784(B) for use by MTCECA. The approved procedures contain the following statement regarding their applicability: “ 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] By its own terms, the approved procedure expires unless reauthorized: “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.”
<b>Motion Pictures</b>	2004.07.01	Upon a determination by the Director of the Office of General Services Division of the South Carolina Budget and Control Board of the underutilization of state property by a state agency, the department may negotiate below market rates for temporary use, no more than twelve months, of space for the underutilized property. The negotiations and temporary use are exempt from the provisions of the State Consolidated Procurement Code. The motion picture production company shall reimburse costs at normal and customary rates incurred by the state agency to the state agency, including costs required to repair any damage caused by the motion picture production company to real or personal property of the State.	Quoted from Section 12-62-70(A)(1).
<b>Multi-State Cooperative Purchasing</b>	1997.11.04	“The Board, in accordance with Code Section 11-35-710, granted an exemption from the Consolidated Procurement Code to allow the Office of General Services the authority to identify high volume procurement items such as office supplies, office equipment, information technology products, vehicles, petroleum products and pharmaceutical products that are used in the operation and the administration of state government which are suited for purchase pursuant to multi-state cooperative agreements and to enter into those agreements using procurement procedures appropriate for each transaction and agreeable to the participating states in those instances in which clear cost savings can be realized.”	Reference should be made to Article 19 of Title 11, Chapter 35.
<b>Perishables</b>	1981.07.30 2006.06.13	“The following exemptions are granted from this chapter: (9) fresh fruits, vegetables, meats, fish, milk and eggs.”	Quoted from § 11-35-710(9).
<b>Post Office Boxes</b>	1982.04.27	“The Board exempted the following from the purchasing procedures required under the Consolidated Procurement Code as authorized by Section 11-35-710: (2) U.S. Post Office Box rentals;” <sup>1</sup>	
<b>Postage</b>	1982.02.25	Postage <sup>1</sup>	
<b>Prison Industries - Raw Materials</b>	1981.07.30 2006.06.13	“The following exemptions are granted from this chapter: (2) the purchase of raw materials by the South Carolina Department of Corrections, Division of Prison Industries....”	[1] Quoted from § 11-35-710(2). [2] <i>See generally</i> § 24-3-320 (authorizes SCDC’s purchase of raw materials for prison industries)
<b>Prison Industries - Sales</b>	1995.01.12 2006.06.13	“The following exemptions are granted from this chapter: (13) the purchase of supplies, services, or information technology by state offices, departments, institutions, agencies, boards, and commissions or the political subdivisions of this State from the South Carolina Department of Corrections, Division of Prison Industries.”	[1] Quoted from § 11-35-710(13). The 2006 amendment substituted “supplies, services, or information technology” for “goods, products, and services” in the previous (01/12/95) version. [2] <i>See also</i> § 24-3-330 for a purchase requirement that predates (1960) this exemption, as well as § 24-3-340.

NAME	DATE	EXEMPTION TEXT	NOTES
			[3] Always consult the annual appropriations act. Historically, it includes a proviso related to this topic. For example, the 2008 Annual Appropriations Act included Proviso 89.33 (“All agencies funded in this act, when procuring goods and services, shall first consider contracting for services or purchasing goods and services through the Department of Corrections’ Prison Industries Program. The Department of Corrections shall furnish, upon request, to all agencies a catalogue of goods and services provided by Prison Industries. The department is hereby directed to develop and market a catalogue of Prison Industries products for nationwide circulation.”). 2008 S.C. Act No. 310, Part IB, § 89.33. Generally provisos supersedes other laws during the applicable year.
<b>Professional Dues</b>	1982.04.27	“The Board exempted the following from the purchasing procedures required under the Consolidated Procurement Code as authorized by Section 11-35-710: (5) professional dues and memberships.” <sup>1</sup>	
<b>Professional Fees</b>	1983.04.26	“The Budget and Control Board . . . amended an exemption granted under the Consolidated Procurement Code for professional dues and memberships to include registration fees.” <sup>1</sup>	
<b>Professional Services - Academic Consultants for CHE</b>	1990.08.14	“The Board exempted Commission on Higher Education procurement of consultants for evaluations of academic programs from the requirements of the Procurement Code, provided the Commission follows procedures approved by the Division of General Services.”	Original approved procedures included in exhibit to Board minutes.
<b>Professional Services - Actuaries</b>	1982.09.14	“The Board exempted actuaries from the requirements of the Consolidated Procurement Code.” <sup>1</sup>	Reference “audit” exemption granted on July 13, 1982, when Board exempted “certified public accountants and public accountants engaged to perform financial and/or compliance audits, subject to approval by the State Auditor’s Office, <i>with actuarial audits and other accounting services to be procured under the terms of the Consolidated Procurement Code.</i> ” (emphasis added)
<b>Professional Services - Appraisers</b>	1985.03.12	“The Board exempted appraisers from the purchasing procedures and reporting requirements of the Procurement Code in accord with Code Section 11-35-710, on the recommendation of the Division of General Services.”	
<b>Professional Services - Artists</b>	1982.12.17	Professional artists utilized by the South Carolina Arts Commission. <sup>1</sup>	
<b>Professional Services - Attorneys (1)</b>	1982.07.13	“The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (a) attorneys, subject to approval by the Attorney General’s Office.” <sup>1,3</sup>	[1] See § 1-7-160 (“A department or agency of state government may not hire a classified or temporary attorney as an employee except upon the written approval of the Attorney General . . .”) and § 1-7-170 (“A department or agency of state government may not engage on a fee basis an attorney at law except upon the written approval of the Attorney General . . .”). Historically, these provisions appear each year in the annual appropriations act, which supersedes other laws. <i>E.g.</i> , 2008 S.C. Act No. 310, Part IB, § 45. [2] See generally § 11-35-1260 and R. 19-445.2025(D).

NAME	DATE	EXEMPTION TEXT	NOTES
Professional Services - Attorneys (2)	1999.02.09	"[A]mended the July 13, 1982, Consolidated Procurement Code exemption for legal services pursuant to Section 11-35-710 of the Code to exempt attorneys approved by the [Budget and Control] Board." 1,3	Intended to expand exemption to include attorneys approved by either the Attorney General or the Budget & Control Board. See Exhibits to agenda item. Statutory requirements of Sections 1-7-160 & -170 still apply.
Professional Services - Auditors	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (b) certified public accountants and public accountants engaged to perform financial and/or compliance audits, subject to approval by the State Auditor's Office, with actuarial audits and other accounting services to be procured under the terms of the Consolidated Procurement Code." 1,3	See generally § 11-35-1250 and R. 19-445.2025(E).
Professional Services - Brokerage	2002.02.14	"Pursuant to S.C. Code Ann. Section 11-35-710, the Board may exempt governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code upon the recommendation of the Office of General Services. The Board exempted the purchase of services relating to investment counselors on July 13, 1982, and the Investment Panel and OGC recommended that the exemption be clarified to include investment management and advisory services and expanded to include brokerage services. . . . The Board approved the recommendation to exempt brokerage services and investment management and advisory services from the requirements of the Consolidated Procurement Code as recommended by the Retirement Systems Investment Panel and the Office of General Services." (emphasis added)	
Professional Services - Clergy	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (k) clergy." 1,4	
Professional Services - Court Reporters	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (l) court reporters." 1,4	
Professional Services - Dentists	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (f) dentists." 1,3	
Professional Services - Doctors	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (d) medical doctors." 1,3	
Professional Services - Expert Witness	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (m) expert witness services." 1,4	
Professional Services - Hospital & Med Clinic	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (c) hospital and medical clinic services." 1,3	
Professional Services - Investment Counselors	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (j) investment counselors." 1,3	On February 14, 2002, the Board also exempted both brokerage services and investment management and advisory services.
Professional Services - LPNs	1982.07.13	"The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (h) licensed practical nurses." 1,3	

NAME	DATE	EXEMPTION TEXT	NOTES
<b>Professional Services - Occupational Therapists</b>	1983.05.10	“The Budget and Control Board exempted occupational therapists from the purchasing procedures of the Consolidated Procurement Code, as recommended by the Division of General Services.” <sup>3</sup>	Recommendation of General Services appears in the agenda item, which indicates that the conditions for purchasing professional services (as stated in the Board’s minutes of July 13, 1982) apply equally to this exemption. See footnote 3.
<b>Professional Services - Optometrists</b>	1982.07.13	“The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (e) optometrists” <sup>1,3</sup>	
<b>Professional Services - Osteopaths</b>	1983.01.11	“The Board exempted from the purchasing procedures and reporting requirements of the Consolidated Procurement Code . . . the purchase of the services of doctors of osteopathy. The Board took this action upon the recommendation of the Division of General Services.” <sup>1,3</sup>	Recommendation of General Services appears in the agenda item, which indicates that the conditions for purchasing professional services (as stated in the Board’s minutes of July 13, 1982) apply equally to this exemption. See footnote 3.
<b>Professional Services - Physical Therapists</b>	1983.03.22	“The Board exempted physical therapists, physical therapy assistants . . . from the requirement that these services be purchased through the respective Chief Procurement Officers area of responsibility.” <sup>1,3</sup>	Board minutes incorporate language almost identical to conditions imposed on professional services exemptions found in Board minutes of July 13, 1982. See footnote 3.
<b>Professional Services - Psychiatrists</b>	1982.07.13	“The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (i) psychiatrists.” <sup>1,3</sup>	
<b>Professional Services - RNs</b>	1982.07.13	“The Board exempted the purchase of the following services by governmental bodies from the purchasing procedures and reporting requirements in the Consolidated Procurement Code: (g) registered nurses.” <sup>1,3</sup>	
<b>Professional Services - Speech Pathologists</b>	1983.03.22	“The Board exempted speech pathologists . . . from the requirement that these services be purchased through the respective Chief Procurement Officers area of responsibility.” <sup>1,3</sup>	Board minutes incorporate language almost identical to conditions imposed on professional services exemptions found in Board minutes of July 13, 1982. See footnote 3.
<b>Professional Services - Veterinary Services</b>	1983.09.13	“The Board approved the reference exemptions in accord with the Procurement Code Section 11-35-710, upon the recommendation of the Division of General Services.” General Services recommended “that the following be exempted from the requirements of the Procurement Code in accordance with Code Section 11-35-710: (b) veterinary services customarily obtained on a fee basis rather than by competitive solicitation, on the condition that the individual or firm involved must be licensed to perform veterinary services, that the individual, in fact, is providing those services licensed, and that the contractual relationship between the individual or firm and governmental body cannot be an employee/employer relationship which would be governed by State Personnel rules and regulations.”	
<b>Public Service Authority (Santee Cooper)</b>	1981.07.30 2006.06.13	“The following exemptions are granted from this chapter: (5) South Carolina Public Service Authority....”	Quoted from § 11-35-710(5).
<b>Research Authority (2)</b>	1983.09.21 2005.06.07 2006.06.13	“The following exemptions are granted from this chapter: (12) South Carolina Research Authority....”	Quoted from § 11-35-710(12).

NAME	DATE	EXEMPTION TEXT	NOTES
<b>Research University - Economic Development Bond Act exemption</b>	2004.03.17	"All procurements of infrastructure, as defined in Section 11-41-30 and owned by a research university, as defined in Section 11-51-30(5), shall be exempt from Title 11, Chapter 35, except that such research university must work in conjunction with the Budget and Control Board's Chief Procurement Officer to establish alternative procurement procedures. The research university shall submit its alternative procurement procedures to the State Budget and Control Board for approval. Such procurement process shall include provisions for audit and recertification."	<p>[1] Quoted from Section 11-41-180.</p> <p>[2] On May 4, 2004, the Board approved procurement procedures pursuant to Section 11-41-180 for use by Clemson University. The approved procedure contains the following statement regarding its applicability: "This code, and the accompanying regulations, are authorized by Section 11-41-180 and shall apply to every procurement of infrastructure, as defined in Section 11-41-30, by Clemson University that relates specifically to an economic development project approved pursuant to Section 11-41-80." Section 40</p> <p>[3] By its own terms, the approved procedure expires unless reauthorized: "The code and regulations shall be resubmitted to the Board for recertification during the first quarter of the fifth year following initial approval. The code and regulations expire at the end of the second quarter of the fifth year following initial approval unless reapproved by the Board." Section 1210</p>
<b>Research University - SC Research University Infrastructure Act exemption</b>	2004.03.17	"The research universities while engaging in projects related to this act shall be exempt from the state procurement process, except such research universities must work in conjunction with the Budget and Control Board's Chief Procurement Officer to establish alternate procurement procedures, and must submit a procurement process to the State Commission on Higher Education to be forwarded to the State Budget and Control Board for approval. These processes shall include provisions for audit and recertification."	<p>[1] Quoted from Section 11-51-190.</p> <p>[2] On November 1, 2005, the Board approved procurement procedures pursuant to Section 11-51-190 for use by all three research universities. The approved procedures contain the following statement regarding their applicability: "This code and the accompanying regulations are authorized by Section 11-51-190 and may be used by the research universities only for procurements specifically related only to a Research Infrastructure Project (as defined in Section 11-51-30) that has been approved by the Budget and Control Board as a Research Infrastructure Project for purposes of this code. A project may be approved only if a research university has defined the project with sufficient specificity to effectively limit the acquisitions to which the approved procurement procedures would apply and bonding capacity is still available for the research university pursuant to the South Carolina Research University Infrastructure Act. Approval of a project for purposes of using this code, and the accompanying regulations, may be granted prior to seeking approval of the project pursuant to Sections 11-51-70, 11-51-100, or 11-51-110."</p> <p>[3] By its own terms, the approved procedure expires unless reauthorized: "The Code and regulations shall be resubmitted to the Board for recertification during the first quarter of the fifth year following initial approval. The Code and regulations expire at the end of the second quarter of the fifth year following initial approval unless re-approved by the Board." Section 1210</p>
<b>Software Licenses</b>	1986.04.22	The Board exempted "[l]icense agreements for computer software after such software has been competitively bid as required by the Procurement Code" "from the purchasing procedures of the Procurement Code."	See Procurement Policy Statement No. 2008-1.
<b>State Ports Authority</b>	1981.07.30 2006.06.13	"The following exemptions are granted from this chapter: (3) South Carolina State Ports Authority...."	Quoted from § 11-35-710(3).

NAME	DATE	EXEMPTION TEXT	NOTES
<b>SUPERB Fund</b>	1995.06.29	“Compensation from the Superb Account by an owner or operator or his agent conducting site rehabilitation through his own personnel or through contractors or subcontractors is not considered a state contract for purposes of procurement or subject to state bid requirements.”	Quoted from Section 44-2-130(d).
<b>Telephone Late Charges</b>	1987.03.24	“The Board, under authority granted in Section 11-35-710, exempted from Section 11-35-45 late payment charges from regulated companies providing telecommunication services to State agencies thereby allowing public utilities to assess late payment charges under their respective tariffs as approved by the South Carolina Public Service Commission effective for late payment charges arising from services rendered after July 1, 1987.”	[1] This was done to correct the omission of telecommunication services from the previous exemption for late charges, granted May 27, 1986, since all are regulated by the Commission.
<b>Timber Sales (Corrections)</b>	1969	S.C. Code Ann. § 24-1-250(A) expressly authorizes the Department of Corrections, subject to approval by the State Forester, “to sell mature trees and other timber suitable for commercial purposes from lands owned by the department” and addresses how the proceeds of such sales may be used.	This authority, which dates back to 1969, clearly precedes enactment of the Procurement Code. Accordingly, timber sales by the Department of Corrections pursuant to section 24-1-250 are not governed by the Procurement Code. <i>See generally</i> Section 11-35-3810 (“Subject to existing provisions of law, the board shall promulgate regulations governing [disposal of personal property] . . .”).
<b>Timber Sales (Disabilities and Special Needs)</b>	1969	S.C. Code Ann. § 44-20-310 expressly authorizes the Department of Disabilities and Special Needs, subject to approval of the Budget and Control Board, and after consultation by the Board with the State Forester, to “sell timber from its forest lands” and directs that the proceeds be deposited in the State’s general fund.	This authority, which dates back to 1969, clearly precedes enactment of the Procurement Code. Accordingly, timber sales by the Department of Disabilities and Special Needs pursuant to section 44-20-310 are not governed by the Procurement Code. <i>See generally</i> Section 11-35-3810 (“Subject to existing provisions of law, the board shall promulgate regulations governing [disposal of personal property] . . .”).
<b>Timber Sales (Forestry Commission)</b>	1933	Chapter 23 of Title 48 authorizes the State Forestry Commission to sell timber and provides for disposition of the proceeds. While the Commission lacks a single authorizing statute similar to those discussed above, the comprehensive statutory scheme outlined in Title 48, Chapter 23 makes clear the Commission’s role in timber sales. S.C. Code Ann. §§ 48-23-110; -120; -130; -132; -136; -210; -220; and -270.	Most provisions of this statutory scheme predate the Procurement Code by many years. Accordingly, timber sales by the State Forestry Commission pursuant to Title 48, Chapter 23 are not governed by the Procurement Code. <i>See generally</i> Section 11-35-3810 (“Subject to existing provisions of law, the board shall promulgate regulations governing [disposal of personal property] . . .”).
<b>Timber Sales (John De La Howe School)</b>	1953	S.C. Code Ann. § 59-49-110 expressly authorizes the John De La Howe School “to carry out an improved forestry practice on the timber holdings of the school property and to apply the revenues derived therefrom for the further improvement and development of the school forest lands and for other school purposes.”	This statutory scheme dates back to 1953. Since it clearly precedes enactment of the Procurement Code, timber sales by the John De L Howe School pursuant to section 59-49-110 are not governed by the Procurement Code. <i>See generally</i> Section 11-35-3810 (“Subject to existing provisions of law, the board shall promulgate regulations governing [disposal of personal property] . . .”).
<b>Timber Sales (Juvenile Justice)</b>	1973	S.C. Code Ann. § 63-19-420 expressly authorizes the Department of Juvenile Justice, subject to approval by the State Forester, “to sell mature trees, other timber, and farm products and commodities from lands owned by the department.” Subject to approval by the Budget and Control Board, this section authorizes the Department to use the proceeds of such sales for capital improvements.	This statutory authority can be traced back to 1973. Since it clearly precedes enactment of the Procurement Code, timber sales by the Department of Juvenile Justice pursuant to section 63-19-420 are not governed by the Procurement Code. <i>See generally</i> Section 11-35-3810 (“Subject to existing provisions of law, the board shall promulgate regulations governing [disposal of personal property] . . .”).

NAME	DATE	EXEMPTION TEXT	NOTES
<b>Timber Sales (Natural Resources)</b>	1955	S.C. Code Ann. § 50-3-510 authorizes the Department of Natural Resources to “contract for the selective cutting and sale of timber on any lands held by the department on behalf of its Wildlife and Freshwater Fish Division,” subject to the State Forester’s approval. Section 50-3-520 requires such contracts to be entered pursuant to a public bid. Section 50-3-550 dictates the disposition of the proceeds.	This statutory scheme dates back to 1955. Moreover, this statutory scheme was expressly addressed by Act 148, the act that established the Procurement Code. Accordingly, timber sales by the Department of Natural Resources pursuant to Article 5 of Chapter 3, Title 50 are not governed by the Procurement Code. <i>See generally</i> Section 11-35-3810 (“Subject to existing provisions of law, the board shall promulgate regulations governing [disposal of personal property] . . .”).
<b>Treasurer - Bond Issues</b>	1982.08.24	“The Board exempted the following items from the requirements of the Consolidated Procurement Code. . . : (3) expenditures of funds by the Office of State Treasurer in the issuance of bonds to include printing costs and any fees associated with any bond issuance.” <sup>1</sup>	
<b>Treasurer - Debt &amp; Banking Functions; Financing of Lease / Purchase</b>	1986.03.25	“The Board exempted the financing provisions of lease/purchase contracts and other debt and banking functions of the State Treasurer’s Office from the procurement procedures of the Procurement Code, upon the recommendation of the Division of General Services, pursuant to Code §11-35-710.”	[1] “The General Assembly finds that in order to provide greater efficient and effective service to the various state agencies and institutions, all lease financing activities should be administered by one agency. The General Assembly recognizes that the Office of State Treasurer currently administers capital leases and third-party lease purchase financings.” 1994 Act No. 497, Part II, §10A [2] “The Office of State Treasurer is authorized to provide financing arrangements under the master lease program on behalf of boards, commissions, institutions, and agencies of state government for the purpose of renting, leasing, or purchasing office equipment, telecommunications equipment, energy conservation equipment, medical equipment, data processing equipment, and related software in accordance with procurement statutes and regulations.” S.C. Code Ann. § 1-1-1020(A) (2005).
<b>Trident Technical College Enterprise Campus Authority</b>	2006.06.12	“(A) The authority and its permanent improvements and the financing of them are exempt from the provisions of Chapter 47 of Title 2, and the leasing of property and the granting of easements and rights of way by the authority are exempt from the provisions of Sections 1-11-55, 1-11-56, 1-11-57(1), and 10-1-130. (B) For all matters associated with the enterprise campus, the authority is exempt from the South Carolina Consolidated Procurement Code; except that, the authority shall adopt a procurement policy requiring competitive solicitations, and the policy must be filed with and approved by the State Budget and Control Board. The policy must include provisions for audit and recertification. (C) The authority is exempt from all regulations and general laws governing disposal of surplus government property.”	[1] Quoted from Section 59-53-480. [2] On September 19, 2006, the Board approved a policy pursuant to 59-53-480. The approved policy contains the following statement regarding their applicability: “The TTCECA Procurement Policy is authorized by Section 59-53-480(B) and applies to every procurement of supplies, services, or construction by Trident Technical College Enterprise Campus Authority for matters associated with the Enterprise Campus as that term is defined in Section 59-53-465.” [3] By its own terms, the approved policy expires unless reauthorized: “The TTCECA 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 TTCECA 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.”
<b>Tuition Payments</b>	1987.07.14	“The Board exempted tuition paid [by a governmental body] to all institutions of higher learning [public or private] from certain requirements of the procurement code in accordance with Code Section 11-35-710.”	Exemption applies only to payments made by a governmental body to an institution of higher education. Exemption does not extend to the institution of higher education’s expenditure of tuition monies.



<b>NAME</b>	<b>DATE</b>	<b>EXEMPTION TEXT</b>	<b>NOTES</b>
<b>Utilities</b>	1982.04.27	“The Board exempted the following from the purchasing procedures required under the Consolidated Procurement Code as authorized by Section 11-35-710: (1) invoices for gas and electricity and water and sewer services provided by public utilities subject to rate regulation by the Public Service Commission;” <sup>1</sup>	
<b>Utilities - Late Fees</b>	1986.05.27	“The Board clarified the exemption [previously ]granted [on April 27, 1982] under Section 11-35-710 to exclude late payment charges under Section 11-35-45 effective July 1, 1986 thereby allowing public utilities to assess late payment charges under their respective tariffs as approved by the South Carolina Public Service Commission.”	[1] Amends exemption granted by Board on April 27, 1982. [2] Reference should be made to the related exemption granted on March 24, 1987.
<b>Venture Capital Authority</b>	2005.06.03	“The provisions of Title 11, Chapter 35 do not apply to any transaction necessary to implement this chapter.”	Quoted from Section 11-45-100(C).
<b>Vocational Rehab. Industries</b>	1982.05.11	Raw materials and related supplies to be exclusively used in the production of a finished product by clients for the Department of Vocational Rehabilitation on a contract basis with industry. <sup>1</sup>	
<b>Wind and Hail Underwriting Association</b>	2007.06.11	“(A) The association shall operate pursuant to a plan of operation which provides for the following: (10) procedures for an open, competitive process for the acceptance and cession of reinsurance, provided that the association is not required to follow the provisions of the South Carolina Consolidated Procurement Code, and for determining the amounts of insurance to be provided to specific risks;”	Quoted from Section 38-75-340(A)(10). Section 38-75-310(2) defines “association” as the South Carolina Wind and Hail Underwriting Association established pursuant to the provisions of Article 5, Chapter 75, Title 38.

## Explanatory End Notes

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<sup>1</sup> This exemption extends only to the Procurement Code's competitive bid procedures. The minutes of the Board's meeting on April 26, 1983 provide as follows: "Upon a motion by Mr. Patterson, seconded by Mr. Morris, the Budget and Control Board clarified that exemptions granted to date in accordance with Section 11/35/710 [sic] of the Consolidated Procurement Code are exemptions from the competitive bid procedure only and that all other aspects of the Code, specifically the disposition of property procedure and the reporting procedures, must be complied with . . ." According to the Agenda Item, which is an exhibit to the Board's meeting minutes, "[t]he Division of General Services request[ed] that the Board clarify that the exemptions granted to date in accordance with Section 11-35-710 of the Consolidated Procurement Code are exemptions from the competitive bid procedure only and that all other aspects of the Code, specifically the disposition of property procedure, the reporting procedures (i.e., sole source, emergency, minority, etc.), must be complied with." According to the Agenda Item Worksheet, which is referenced by and attached to the Agenda Item, the Division of General Services provided the Board the following summary background information regarding its request:

"[T]he Board has exempted certain supplies and/or services from the purchasing procedures provided in the Code. For clarification, exemptions granted to date, with respect [sic] to supplies or services, are from the purchasing procedures of the Procurement Code which additionally exempts affected governmental bodies from purchasing said items through the respective Chief Procurement Officer's area of responsibility. Non-purchasing provisions of the Code are not affected by these exemptions. . . ."

<sup>3</sup> For this exemption to apply, "the individual or firm involved must be licensed to perform the specific professional services, must provide that specific service to the requesting governmental body, and the contractual relationship created by the individual or firm and the governmental body cannot be an employer/employee relationship with would be governed by State Personnel Rules and regulations . . ." Board Minutes of July 13, 1982

<sup>4</sup> For this exemption to apply, the individuals or firms involved must "be considered independent contractors." Board Minutes of July 13, 1982.

## Topical End Notes

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<sup>n</sup> **Gifts:** At least by the mid-1980's, staff appears to have applied the Procurement Code to construction gifts. See Memo of Jan. 8, 1986 from McPherson to Ellis (Exhibit 25, Brd Minutes of Jan. 16, 1986). See also Letter of Dec. 5, 1986 from Clement to Kelly (Exhibit 8 to Brd Minutes of Jan. 6, 1987). By 1987, a standard form agreement for the acceptance of such gifts was in use. Letter of Apr. 3, 1986 from Wilson to McPherson (form recommended by Attorney General attached)(Exhibit 8 to Brd Minutes of Jan. 6, 1987). By at least 1988, the State Engineer had adopted this form, designated it as the SE-710, and included written procedures for accepting such gifts in the OSE Manual. See Manual for Planning and Execution of State Permanent Improvements, Part II, Chapter 16 (excerpt appearing as Exhibit 22, Brd Minutes of Sep. 13, 1988). See also Manual for Planning and Execution of State Permanent Improvements, Part II, Chapter 15 (July 1989) and Exhibit 16, Brd Minutes of Nov. 21, 1990. Of interest, the 1989 Manual referenced both the Procurement Code and Section 1-11-65 as authority for this gift procedure. See generally Exhibit 13, Brd Minutes of May 12, 1992 (including a copy of the agency's written Procedure for Accepting Donations to State Agencies in the Form of Construction).

Regarding construction related gifts, a law was enacted in 1993 to expressly authorize gifts-in-kind of construction and construction related design services and to provide that no other requirements - including the Procurement Code - could be imposed on such gifts. S.C. Code Ann. § 2-47-56 (2005). An almost identical provision was added to the Procurement Code in 1995. S.C. Code Ann. § 11-35-475 (1986) (repealed by 2006 Act No. 376). Section 11-35-475 was later repealed, though Section 2-47-56 still remains.

In 2006, the Procurement Code was amended to expressly provide that it “does not apply to gifts....” S.C. Code Ann. § 11-35-40(2) (Supp. 2007). The line between a gift and a procurement has been the subject of some discussion and can involve a careful analysis, particularly when construction is involved. E.g., S.C. Att’y Gen. Op. No. 84-8 (January 24, 1984) and Memo of Jan. 13, 1986 from Wilson to McPherson (Exhibit 25, Brd Minutes of Jan. 16, 1986). Generally, the new exclusion for gifts provided by Section 11-35-40(2) extends only to transactions that do not involve any performance obligations for the state. See *Baptist Foundation for Christian Education v. Baptist College at Charleston*, 317 S.E.2d 453 (S.C. Ct. App. 1984) (“A gift is a voluntary transfer of property by one to another without any consideration or compensation therefor.”) (emphasis added).

When considering a gift, agencies should consider the potential impact of the following laws: [1] R.19-445.2165; [2] FOIA, Section 30-4-30(a)(11) (regarding identity of donors); [3] The South Carolina Federal and Other Funds Oversight Act, Title 2, Chapter 65 (note §2-65-20's reference to services); [4] Title 2, Chapter 47, especially including sections 2-47-50(1) & 2-47-56; [5] section 11-13-45; [6] applicable provisos in the annual appropriations act, historically part number 72; [7] Sections 1-11-65; [8] Section 2-1-170, prohibiting gifts by the State; and, [9] Manual for Planning and Execution of State Permanent Improvements, Part II.