

## We're Talking to the PROs of PROcurement



By **Delbert Singleton, Director,**  
**Procurement Service Division**

WELCOME to the inaugural edition of DisPatcheS! DisPatcheS is the new monthly journal of the Division of Procurement Services the intent of which is

to provide a forum for relevant and informative dialogue for procurement professionals throughout State and local government. Our aim is to assist you in meeting your needs by providing information that will aid you in tackling the challenges we all encounter in this dynamic and evolving acquisition environment.

While the agencies we work for have diverse missions, as procurement professionals, we have a common goal. That goal is to employ sound procurement practices to better serve our custom-

ers and stakeholders. DisPatcheS is one more tool to assist us in accomplishing and maintaining that goal.

We look to spark discussion, provide guidance and insight, and thoughtful resolution of current and ongoing procurement challenges through DisPatcheS. To that end, we encourage you to become engaged in the discourse by letting us know about innovative things you're doing in your shop, problems you're encountering, best practices you've employed, or sharing your skills and knowledge with the greater procurement community.

As a parting note, you'll find of particular interest in this inaugural edition of DisPatcheS our newly branded Mission Statement called A3 or A-Cubed. You'll have to read the column to see what it's about. But, let's just say it places renewed emphasis on our commitment to meeting the State's procurement needs.

## DPS Adopts Mission Statement



"A<sup>3</sup>" captures the Division's regulatory duties as well as a broader commitment to the State's procurement community:

### **Acquire**

*We provide efficient, innovative, and responsive services to acquire information technology, construction, and goods and services through effective broad-based competition.*

### **Administer**

*We provide guidance and oversight to promote integrity, ethical behavior, and increased public confidence in the acquisition process.*

### **Advise**

*We provide training and advice to ensure compliance with law, policies, and practices.*

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## DPS is Hiring

The Division of Procurement Services has posted two openings:

**Procurement Manager II** and  
**Procurement Manager II  
Team Lead**

Check them out online [here](#).



## The Division of Procurement Services

### Office of the State Engineer

is offering three trainings during the month of September

#### DID YOU KNOW...?

Under the SC Consolidated Procurement Code and Regulations, the Chief Procurement Officers of the state are required to develop a system of training for procurement that encompasses the latest techniques and methods of public procurement.

Personnel from all public entities are eligible and encouraged to participate in the certificate programs. All procurement officers within the Division of Procurement Services are required to participate. All other governmental procurement officers are encouraged to participate voluntarily. Participation in the certificate programs by state agency personnel will ensure the knowledge necessary to follow the requirements of the SC Consolidated Procurement Code has been delivered through training.

*Alternative Project Deliver Methods* will be offered 9/21/18. This course reviews the requirements for requesting and implementing an alternative delivery method established by the South Carolina Consolidated Procurement Code, and the process delineated in the Manual for Planning and Execution of State Permanent Improvements, Part II (Manual) written by the State Engineers Office.

*Design-Bid-Build: Project Planning to Bidding* will be offered 9/24/18. This course reviews the requirements for Design-Bid-Build projects established by the South Carolina Consolidated Procurement Code, and the process delineated in the Manual for Planning and Execution of State Permanent Improvements, Part II (Manual) written by the State Engineers Office.

*Design-Bid-Build: Project Bidding through Closeout* will be offered 9/27/18. This course further reviews the requirements for Design-Bid-Build projects established by the South Carolina Consolidated Procurement Code, and the process delineated in the Manual for Planning and Execution of State Permanent Improvements, Part II (Manual) written by the State Engineers Office.

**All courses are scheduled to be held from 9 a.m. to 3 p.m. Midlands Technical College Northeast Campus' Room CT 105, 151 Powell Rd., Columbia, SC 29203. To register, please click on the course names above.**

**All courses are \$30.00.**

## State Fiscal Accountability Authority Actions

**Notice of Regulation Drafting:** At its August 21 meeting the State Fiscal Accountability Authority authorized the Division of Procurement Services to publish a [Notice of Regulation Drafting in the September State Register](#). This will allow the Division to draft regulations which will then be submitted to the Authority for authorization to publish in the State Register for purposes of receiving public comment.

**Limited Exemption for healthcare employment agencies -** In 1982 and 1983, the Budget and Control Board (Board) exempted the acquisition of Dentists, Medical Doctors, Psychiatrists, Optometrists, RNs, LPNs, and Physical Therapists from the purchasing procedures of the Consolidated Procurement Code (Code). Since 1983, the manner in which licensed health professionals seek temporary employment has changed. The industry now relies heavily on the services of healthcare employment agencies (e.g. Locum Tenens providers). However, the Board never exempted the acquisition of healthcare employment agencies from the purchasing procedures of the Code. This created a dilemma for those agencies relying heavily on the services of temporary medical professionals, violate the Code or do without much needed services. To address this dilemma, the Departments of Mental Health, Corrections, Juvenile Justice, and Education requested an exemption for the acquisition of the services of temporary healthcare employment agencies. At its August 21, 2018, meeting, the State Fiscal Accountability Authority (Authority) considered these requests and granted an exemption. However, the Authority limited the scope of who could take advantage of this exemption. Only those agencies that submitted the request for the exemption may use it. Any other agency acquiring the services of a healthcare employment agency must do so in accordance with the competitive purchasing procedures of the Code. Audit and Certification will report an agency's failure to acquire these services in accordance with the competitive purchasing procedures of the Code.

### *For the Record...*

The Procurement Review Panel (Panel) recently held that a protestant has until midnight of the tenth day after posting of the Notice of Intent to Award (Award) to submit his or her protest to the Chief Procurement Officer (CPO).

Only when the tenth day falls on a weekend or holiday must the protestant file her protest on or before 5 PM of the following business day. *In Re: Public Consulting Group, Inc., Case No. 2018-2.* In this case, the CPO received a protest after 5 PM on the tenth day after posting of award.

Based on historic practice, the CPO dismissed the protest as untimely. The protestant appealed arguing that he had until midnight of the tenth day to protest. The Panel agreed with the protestant. [Click Here](#) for the case file on the Order On Dispositive Motions.



## The Spice Trade

By Mike Spicer , CPO

With the approval of Exemption 78 in 1986, the Budget and Control Board exempted the renewal of software licenses from the competitive requirements of the Procurement Code if that software was originally competitively procured.

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." Approved 1986.04.22

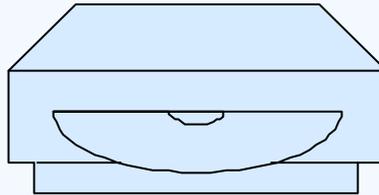
The evolution of the software industry to a Software as a Service (SaaS) model has clouded the issue of license renewal.

When an agency acquires on premise software through a competitive procurement, the agency receives a copy of the software which is accompanied by an End User License Agreement (EULA). The EULA sets the conditions for installation and use of the software and protects the ownership of the intellectual property. The renewal of the licenses for this software is exempt

## Software as a Service and Exemption 78

under Exemption 78. If the manufacturer releases a new version of the software that requires a new license, the new license is not exempt. The acquisition of a license for the new version is considered a new procurement.

In a pure SaaS environment, when an agency acquires Software as a Service (SaaS), it receives a "license" to use the



service. This "license" is subscription, or a "seat license." The agency never receives a copy of the software and never installs or copies the software so the terms of a EULA protecting the use and ownership of the software are inapplicable. The maintenance and upgrades are included in the subscription fees. The SaaS provider can modify, upgrade, or enhance the service without limitation. The SaaS provider can replace the originally acquired version of the service with an enhanced ver-

sion that, were the software available in an on premise environment, would require a new license. However, since this is a subscription service a new "license" is not required. The exemption of SaaS subscriptions from the Code would result in a perpetual contract for the latest version of the manufacturer's product. The only reason to ever recompute the service would be if the agency decides not accept the latest version and cancels the service.

In addition to a perpetual contract for the latest version of a product, this unfettered enhancement of the service could also result in the acquisition of functionality beyond the scope of the original solicitation. For example:

An agency solicits and awards a contract for accounting as a service. After award, the SaaS provider enhances the accounting functionality to provide budgeting, human resources, payroll, scheduling, project assignments, client data management, customer relationship management, etc. The SaaS provider has now morphed his accounting system into an EPR. If the renewal of

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the seat license were exempt the agency could bid an accounting system and end up with e an ERP.



The lack of need for a license to protect the use of the software and SaaS morphing lead to the conclusion that the renewal of seats or “licenses” for Software as a Services (SaaS), whether competitively procured or not, is not exempt from the competitive requirements of the Code.

For the same reasons, the renewal of SaaS subscriptions for environments where a thin client or part of the software are installed on premise cannot be exempt from the Code. The SaaS provider would have the same perpetual contract to offer the latest enhanced version of the software or morph the offering into a product that is outside the scope of the original procurement.



*Mike Spicer is Chief Procurement Officer for the Division of Procurement Services. His 33 years, 7 months, 13 days, 3 hours, and 20 minutes (not that he’s counting) in the trenches of purchasing, protests and professional development make him a fountain of knowledge. We’re grateful for this resource as circumstances often demand it.*

## Statewide Contract News, Y’all



### Goods & Services

**Low Speed Electric Vehicles (LSV)** – Current Contract expires 9/22/2018. We are not resoliciting this contract due to extremely low demand.

**Professional Tools & Diagnostic Equipment (formerly Hand & Power Tools)** – The State issued two participating addendums for the NASPO power tools contract; one with Snap-On and one with Northern Safety Company. Details pertaining to ordering from either vendor can be found on the Goods & Services portion of our website. These are non-mandatory contracts but our customers are encouraged to use them.

**Solicitation for Rock Salt** – DPS is processing a State Term contract for rock salt for use by all South Carolina governmental bodies and political subdivisions. We anticipate a final award in mid-to late October and you can see the details of the solicitation by following [this link](#).

**Vehicles** – Current Contracts expire 10/31/2018. Solicitations have been issued and we anticipate awards being published in mid-October, with contact effective dates of November 1st. Check our website early afternoon on November 1st for updated contract sheets for the vehicles awarded.

**ADA Buses** – Current Contracts expire 10/31/2018. Rob Malpass is working on the re-solicitation. Please contact Rob at [remalpass@mo.sc.gov](mailto:remalpass@mo.sc.gov) for additional details.

**Office Supplies** – Current Contract expires 9/16/2019. Randy Barr is beginning work on the re-solicitation. Please contact Randy at [rbarr@mno.sc.gov](mailto:rbarr@mno.sc.gov) with any suggestions, concerns, or feedback regarding this solicitation. **MRO Supplies** – Current Contracts expire 4/30/2019. Michael Speakmon is working on the re-solicitation and conducting research on how to make improvements to the next contract.

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If you have any input Michael would find useful, please contact him at [mspeakmon@mmo.sc.gov](mailto:mspeakmon@mmo.sc.gov).

**Industrial Gases** – Current Contract expires 4/30/2019. Rob Malpass is working on the re-solicitation and conducting research on how to make improvements to the next contract. If you have any input Rob would find useful, please contact him at [remalpass@mmo.sc.gov](mailto:remalpass@mmo.sc.gov).

**Furniture**

**Office Furniture** – The Chief Procurement Officer (CPO) granted protests on two lots (1: filing, metal storage and wooden case goods and 2: seating) and DPS will resolicit for these two lots. The CPO denied protests on the remaining two lots. A vendor has appealed the denial of its protest on desks and tables. Pending final resolution and re-solicitation, bridging contracts are in place for Office Furniture.

**Educational Furniture** – The CPO’s denial of a protest has been appealed to the Panel. In the interim, Procurement Services has extended contracts for Educational Furniture.

The most current contract sheets can be accessed using the following links:

- [Educational Furniture](#)
- [Office Furniture](#)

**Information Technology**

**Xirus Network Hardware** – Contract expired 8/19/2018. Based on low usage, the contract was not re-solicited. For any questions, please contact Michael Speakmon at [mspeakmon@mmo.sc.gov](mailto:mspeakmon@mmo.sc.gov).

**Web Conferencing** – Randy Barr is working on the re-solicitation and conducting research on how to make improvements to the next contract. If you have any input Randy would find useful, please contact him at [rbarr@mmo.sc.gov](mailto:rbarr@mmo.sc.gov).

**Classroom Training** -- Current Contracts expire 2/19/2019. Michael Speakmon is working on the re-solicitation and conducting research on how to make improvements to the next contract. If you have any input Michael would find useful, please contact him at [mspeakmon@mmo.sc.gov](mailto:mspeakmon@mmo.sc.gov).



## Procurement Services Division Resources & Forms Online

- Certification Limits for Certified Agencies, Colleges & Universities
- Procurement Forms
- Procurement Card
- Procurement Preferences
- Solutions-Based Procurement
- Reporting
- Green Purchasing
- American Reinvestment and Recovery Act
- Agency Certification
- Illegal Immigration

### Your Turn

Let us know what the State Fiscal Accountability Authority’s Division of Procurement Services can do for your agency. Questions about purchasing, the Procurement Code, or Construction?

Write us by clicking on our

[Comment Page](#)



## Calibrations

### *News from the Office of the State Engineer*

#### **OSE NO LONGER REQUIRING IDC QUARTERLY REPORTS**

On July 24th, OSE revised the Construction Services IDC Delivery Order (SE-690) and the Construction Services IDC Delivery Order Modification (SE-695). Now, if an IDC Delivery Order exceeds an agency's Construction Contract Certification, they must send the Delivery Order or Modification to the OSE project manager for review and approval prior to proceeding with work on the project.

Because this form adds a level of accountability to the IDC process, effective immediately, OSE will no longer require agencies to submit a Quarterly Report for their active IDCs to OSE. It is mandatory that agencies use the new forms and obtain OSE approval, and the DPS Auditors will be looking for this approval when required.

OSE believes this will be a more efficient way for them to keep track of the projects that need to be reviewed by them.

#### **OSE Dates for September**

September 21 — OSE-3 Training Class: Alternative Project Delivery Methods (Phil Gerald, instructor)

September 24 — OSE-1 Training Class: Design-Bid-Build: Project Planning to Bidding (Clint Burdett, Instructor)

September 27 — OSE-2 Training Class: Design-Bid-Build: Project Bidding through Closeout (Margaret Jordan, Instructor)



### **Deputy Phil's Red Hot Tips**

**By Phil Gerald, Deputy State Engineer**

Just like Marty McFly and Doc Brown, the Office of State Engineer has gone back in time. When OSE published the 2001 Manual, the Change Order form for a Design-Bid-Build project (SE-480) contained four pages. The first page contained the summary of dollar amounts and time for approval as a change to the construction contract. The other three pages were available for the contractor and his subcontractors to use as worksheets and backup for direct costs, additional costs, and contractor markup for overhead and profit. OSE discontinued the additional three pages of the SE-480 in 2008.

During the past few years, Agency personnel have contacted OSE on numerous occasions to discuss direct costs, indirect costs, and the application of overhead and profit in construction change orders. Some of these queries also noted the use of the old SE-480 form and its ease-of-use when determining

and calculating overhead and profit. We have heard the masses (or we think we have) and we have created a Change Order Worksheet that can be used and attached to the Change Order Form (SE-380). The Change Order Worksheet is an optional form and is located on the OSE website in Appendix B.

The format of the Change Order Worksheet follows the requirements of the AIA A201 (SCOSE Edition) §7.5.1 for the listing of Direct Costs, Contractor Markup, Additional Costs, and the Total Change Order amount. Entering the appropriate numbers in the spaces provided on the Worksheet, costs are automatically calculated to reveal the total change order amount. The total amount can then be transferred into Item 4 of the Adjustments in the Contract Sum on the SE-380. We think you will find benefit in the utilization of this optional form, Change Order Worksheet.

