

Frequently Asked Questions about Determining Eligibility

The following information is provided solely as an introduction to certain concepts. Only the contract documents and any applicable statutes and regulations are binding. This summary is not an official agency interpretation of either a contract or the law and should not be relied on in any setting.

What is a “local public procurement unit”?

A local public procurement unit means “a political subdivision or unit thereof which expends public funds for the procurement of supplies, services or construction.” § 11-35-4610(3)

What is a political subdivision?

It can be challenging to determine whether a particular entity is a political subdivision or unit thereof. Most (not all) political subdivisions have the power to levy certain taxes or incur bonded indebtedness. Units of political subdivisions normally do not have the power of taxation but are governed or controlled by an entity that does have the power of taxation. The controlling statute defines political subdivisions as the counties of the State, the incorporated municipalities of the State, school districts, special and public service districts or a unit thereof. *See*, S.C.Const. Art X, § 14; S.C. Code Ann. § 11-35-310(23); S.C. Code Regs Ann. 19-445.2155(A).

My Board was appointed by the Governor or my entity was established by statute. Does that mean I am a political subdivision or unit thereof?

Not necessarily. What is the Governor’s continuing involvement in your entity? Does the Governor approve your budget and tell you how you may spend your money? Do you have an obligation to report to the Governor or the General Assembly or County Council and is your entity subject to their continuing oversight? Does the statute continue to control how your entity is operated or does the General Assembly make annual appropriations to you? Does the statute give you the power of taxation or other indicia of sovereignty like the power of eminent domain?

What factors may be considered in determining whether my entity is a local public procurement unit?

Important factors include how and why the entity was formed; who formed the entity; the governmental purpose and objective of the entity; whether the entity has a role in governance and the extent of that role; whether the entity has a prescribed area or territory; whether the entity exists for the benefit of residents of the area it serves; whether it is organized for public rather than particular persons or classes of persons; how the entity is supported, whether by appropriation or grant; the ongoing control by government of the entity’s activities, not just limitations on how it spends its money; whether the entity has authority to borrow money or issue bonds, levy taxes, make

appropriations or to exercise the power of eminent domain; the power to contract and to sue or be sued; the public purpose of the entity; the geographical area that the entity was formed to affect; whether the entity was formed with the intention that it remain under the direct (as compared to remote) control of a governing entity or body; who or what entity supervises the activities of the entity; and the statutory or regulatory framework for the purpose of the entity. These factors and variations of them are generally considered in the determination of whether an entity qualifies as a unit of a political subdivision or a local public procurement unit.

The Federal, State and county governments give me money or grants to spend on certain programs, does that make me eligible?

Not necessarily. It depends upon the direct or indirect control that any one of those governments retains over your entity and its operation and what your entity does and where it does it. There are many non-profit and for-profit agencies that receive government grants and funding to accomplish governmental purposes and objectives. Funding is only one of several factors that must be considered.

My entity participates in other statewide programs, such as the South Carolina Retirement System or the Insurance Reserve Fund. Does that mean my entity is automatically eligible to purchase from or through the State?

No. Each program is governed by a different set of laws. Any assistance provided by Procurement Services should not be considered determinative regarding any other program.