



Francis Marion University

INDEPENDENT PROCUREMENT AUDIT REPORT

**for the Audit Period:
January 1, 2018 to December 31, 2020**

**Office of Audit & Certification
Division of Procurement Services
August 27, 2021**

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INTRODUCTION

The Division of Procurement Services (DPS) audited Francis Marion University's (FMU) internal procurement operating policies and procedures, as outlined in their internal Procurement Operating Procedures Manual, under § 11-35-1230 of the South Carolina Consolidated Procurement Code (Code) and Reg. 19-445.2020ⁱ of the ensuing regulations.

The primary objective of our audit was to determine whether, in all material respects, the internal controls of FMU's procurement system were adequate to ensure compliance with the Code and ensuing regulations.

The management of FMU is responsible for the agency's compliance with the Code. Those responsibilities include the following:

- Identifying the agency's procurement activities and understanding and complying with the Code
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that the agency administers its procurement programs in compliance with the Code
- Evaluating and monitoring the agency's compliance with the Code
- Taking corrective action when instances of noncompliance are identified, including corrective action on audit findings of this audit

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. Projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Our review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

INTRODUCTION

Our audit was also performed to determine if recertification under SC Code Ann. § 11-35-1210 is warranted.

On December 13, 2016 the State Fiscal Accountability Authority (SFAA) granted FMU the following procurement certifications:

<u>PROCUREMENT AREAS</u>	<u>CERTIFICATION LIMITS</u>
Supplies and Services	*\$ 275,000 per commitment
Information Technology	*\$ 175,000 per commitment
Consultant Services	*\$ 150,000 per commitment
Construction Contract Award	\$ 175,000 per commitment
Construction Contract Change Order	\$ 75,000 per change order
Architect/Engineer Contract Amendment	\$ 50,000 per amendment

During the audit FMU requested the following increases in its certification limits.

<u>PROCUREMENT AREAS</u>	<u>REQUESTED CERTIFICATION LIMITS</u>
Supplies and Services	*\$ 325,000 per commitment
Information Technology	*\$ 200,000 per commitment
Consultant Services	*\$ 150,000 per commitment
Construction Contract Award	\$ 175,000 per commitment
Construction Contract Change Order	\$ 75,000 per change order
Architect/Engineer Contract Amendment	\$ 50,000 per amendment

*Total potential purchase commitment whether single year or multi-term contracts are used.

Total Expenditures

During the audit period, the agency conducted procurements as follows:

\$ Amount (000s)	
POs	17,863
DEV	<u>133,734</u>
Total Spend	<u>151,597</u>

SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included testing, on a sample basis, evidence about FMU’s compliance with the Code for the period January 1, 2018 through December 31, 2020, the audit period, and performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Internal procurement and purchasing card (P-Card) procedure manuals
- (2) Written determinations for all sole source and emergency procurements. The following sole source and emergency procurement activity was reported to DPS during the audit period:

<u>Fiscal Year</u>	<u>Count</u>	<u>Sole Source</u>		<u>Emergency</u>	
		<u>\$ Amount</u>	<u>Count</u>	<u>\$ Amount</u>	<u>\$ Amount</u>
Q3;4 2018	6	187,025	-	-	-
2019	22	512,997	-	-	-
2020	24	481,785	6	101,869	
Q1;2 2021	15	310,815	8	135,118	

- (3) Procurement transactions for the audit period as follows:
 - a) Seventy-four payments, each exceeding \$10,000, for a total of \$3.5M
 - b) Thirty-one direct payments totaling \$4.9M
 - c) A block of sequential expenditures over a two-month period reviewed for order splitting or the use of or favored vendors
 - d) Twenty-eight P-Card transactions for two judgmentally selected months for compliance with the South Carolina Purchasing Card Policy and Procedures (State P-Card Policy). During the audit period FMU had 92 cardholders that made P-Card expenditures as follows:

<u>Fiscal Year</u>	<u>Transactions</u>	<u>\$ Amount</u>
Q3,4 2018	3,293	1,093,457
2019	6,053	1,853,641
2020	5,679	1,737,374
Q1,2 2021	2,497	680,304

- (4) Three construction projects totaling \$16.7M, four Indefinite Delivery Contracts totaling approximately \$600K, and one Architect/Engineer Related Professional Service Contract totaling \$500K for compliance with the Manual for Planning and Execution of State Permanent Improvements (Manual).
- (5) Disposition of unauthorized procurements. No unauthorized procurement activity was reported to DPS.
- (6) Reporting of surplus property dispositions, and approval of trade-ins in excess of \$5,000

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- (7) Small and Minority Business utilization plans and reports. The following activity was reported to the Division of Small and Minority Business Contracting and Certification (SMBCC):

<u>Fiscal Year</u>	<u>\$ Goal</u>	<u>\$ Actual</u>
Q3, 4 2018	115,177	8,777
2019	433,561	26,011
2020	412,656	240,696
Q1, 2 2021	421,989	97,618

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RESULTS OF AUDIT

I. Construction Projects

A. Construction Project Inappropriately Treated as Exempt from the Code

Sometime before 2004 the FMU Development Foundation created FMU Student Housing, LLC (the LLC), a 501(c)(3) organization. The Foundation is the only member of the LLC. As part of a complex transaction in 2003, FMU leased its existing student housing facilities and some unimproved real property to the LLC. The LLC assumed operation of the then-existing facilities and constructed new housing. In 2009 the LLC terminated its agreement with the company operating the facilities and contracted with the University for those services. Pursuant to the current contract FMU manages student housing facilities comprising nearly 1400 beds. Village Apartments, included in those facilities, is a thirteen-building complex completed in 1980.¹

On August 22, 2019, FMU contracted with Quality Service Company to replace HVAC systems in fourteen units at Village Apartments for \$77,000. On September 3, 2019, FMU hired Quality to replace the HVAC system in a single unit at Village Apartments for \$6000. On October 21, 2019, FMU awarded a competitively-bid contract to Quality to replace HVAC systems in approximately 64 additional apartments for \$397,200.² FMU—not the LLC nor the Foundation—paid the contractor for all the HVAC work.

Management stated all three purchases were exempt from the Procurement Code (Code) because they were procured on behalf of the LLC. Nothing in the purchase orders or contract between FMU and Quality, however, indicates FMU was acting as the LLC's agent or otherwise on its behalf. Rather, the services were acquired by FMU to fulfill its contractual obligation to the LLC and the contracts were in FMU's name.³

¹ The facts described in this paragraph are recited in a memorandum dated May 29, 2013, from the University's private counsel, except for information FMU's management furnished about Village Apartments. We have not examined the circumstances of the 2003 arrangement nor subsequent dealings between the University and its Foundation or the LLC. Accordingly, we express no opinion whether those dealings are subject to the Consolidated Procurement Code or whether they complied with the Code. The 2013 memorandum argues for various reasons that the Code does not apply. In two previous audits we have found that certain transactions between institutions and their related foundations were in fact subject to the Code. *Audit of Coastal Carolina University's Agreements Regarding University Place and Campus Edge* (April 11, 2012), available at <https://procurement.sc.gov/files/CCU04-11-12.pdf> (last viewed September 17, 2021) and *Winthrop University Procurement Audit Report January 1, 2007 – December 31, 2010* (October 15, 2012), available at <https://procurement.sc.gov/files/Winthrop10.pdf> (last viewed September 17, 2021). To the extent the 2013 memorandum disagrees with the findings of these previous audit reports we stand by our previous findings.

² To the extent any of these acquisitions are properly classified as a routine repair or routine maintenance, they may be acquisitions of services rather than acquisitions of construction using the Code's definitions. For purposes of determining whether the Code applies to the acquisition, this is a distinction without a difference.

³ Were an institution determined to avoid the Procurement Code, the obvious next question is whether an agency can serve as an agent to bid and administer a contract executed solely by the third-party and where only the third-party makes direct payment with their own funds. The answer may depend on many other facts, and we need not address that question today. Nevertheless, it bears remembering that our courts have instructed that the Code must be liberally

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Section 11-35-40(2) provides that the Code “applies to every procurement ... by this State under contract acting through a governmental body....” The term “contract” is defined to mean “all types of state agreements, regardless of what they may be called, for the procurement [of] construction.” § 11-35-310(8). In pertinent part, the term “procurement” is defined to mean “buying, purchasing, renting, leasing, or otherwise acquiring any ... construction.” § 11-35-310(25). The term “construction” means “the process of building, altering, repairing, remodeling, improving, or demolishing . . . *public*⁴ improvements *of any kind* to real property.” § 11-35-310(7). Read together, and absent an exemption,⁵ the Code applies to every acquisition by a governmental body pursuant to an agreement for the process of building. Here, FMU acquired construction—nearly a half-million dollars’ worth of installed HVAC equipment—and all such acquisitions are subject to the Consolidated Procurement Code.⁶

Management also stated these transactions were exempt from the Code because they were paid for with “agency, trust, and fiduciary funds” it held for the LLC.⁷

As noted above, any acquisition of construction is subject to the Code. An actual expenditure is not required. See S.C. Code Ann. Reg. 19-445.2000E(4) (“[T]he Procurement Code applies to every acquisition of the process of improving real property by a governmental body, whether or not the acquisition involves an expenditure of money....”). Even revenue generating contracts are subject to the Code. See S.C. Code Ann. Reg. 19-445.2000E(3) (“[T]he Procurement Code applies even though the governmental body does not make a payment of money. Without limitation,

construed. *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) (“The County’s procurement code is remedial in nature, and its provisions should be construed liberally to carry out its purposes.”).

⁴ Public improvements include improvements made by a public entity regardless of who owns the property. To conclude otherwise, the Procurement Code would not apply to any improvements made to a leased facility, no matter how extensive. Regardless, in the matter under review, Village Apartments predated the University’s ground lease by two decades. There is no doubt that Village Apartments was a “public building” prior to the 2003 transaction with the LLC, and that transaction did nothing to change its character as a public building. Moreover, the University continues to operate Village Apartments as student housing; it owns the property, subject to a ground lease in favor of the LLC; it is effectively obligated by the management agreement to treat the property as its own; it refers its students to the property; and it limits the use of the property to the University’s faculty, employees, and students.

⁵ See, e.g., S.C. Code Ann. § 11-35-710. One example of a board-granted exemption is the “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....” The Board explicitly excluded acquisitions of construction from this exemption even if it were otherwise applicable.

⁶ The University’s outside counsel agrees with this conclusion:

Of course any expenditures the University makes itself in providing services to the LLC are subject to the Procurement Code. Therefore, any University contracts made with suppliers, vendors or subcontractors made to assist the University fulfilling its duties to the LLC under the management agreement would need to comply with the Procurement Code unless an exception applied.

Memorandum dated May 29, 2013, at 19 (described in note 1 above).

⁷ As indicated previously, its lawyer disagreed.

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examples of such contracts include revenue-generating contracts, concession agreements, and contracts structured as a design-build-finance-operate-maintain project.” (citation omitted))

Even if an expenditure were required, the Code’s application is not tied to where FMU obtained the monies it used to pay for the contracts. To the contrary, the Code applies “irrespective of the source of funds.” § 11-35-40(2). Whether or not the funds used by the University to pay its contractor ultimately belonged to it is not determinative. Monies do not need to be “state” funds or “public” funds to trigger application of the Code—it applies no matter the source of the funds.

There are additional issues with the University’s acquisition of the HVAC systems.

- FMU issued the first purchase order on August 22, 2019. However, the contractor claimed the work was complete and invoiced FMU on August 14, 2019. FMU Facilities Management signed off its approval of the work on August 16, 2019. Both performance and acceptance of the work preceded the date of the purchase order. The contractor should not have been allowed to begin work until the PO had been approved and issued.
- On September 26, 2019, FMU advertised a Request for Proposal (RFP-2322) for approximately 64 HVAC installations at the Village Apartments. RFP-2322 contains language pursuant to the Code, including a right to protest clause. It was advertised in SCBO September 26, 2019 referencing FMU. However, the Statement of Award posted October 21, 2019 stated a bidder’s right to protest did not apply to the award, inconsistent with the solicitation and the Code.⁸
- RFP-2322 stated the term of the contract was for up to two years, but there was no required multi-term determination.
- All three purchases (two purchase orders and the RFP) should have been solicited as a single project.
- RFP-2322, as well as the total purchase, exceeded the University’s certification level and required oversight by the Office of State Engineer.

Recommendation: FMU’s acquisition of replacement HVAC systems for the Village Apartments was an unauthorized or illegal procurement and FMU must make any determination required by S.C. Code Ann. Reg. 19-445.2015.

⁸ The University advertised the RFP in South Carolina Business Opportunities, the official state government publication which is generally limited to notice of “proposed procurements required by regulations.” S.C. Code Ann. Reg. 19-445.2040. It drafted and issued the RFP, which expressly references the Code. It chose the competitive sealed proposal method of the Code as the form by which it would accept offers. Neither the SCBO advertisement nor the RFP mention the LLC. Not until FMU posted the award statement did it indicate its belief the Code did not apply. As the Panel announced in *In Re Protest of Wometco Food Services, Inc.*, Panel Case No. 1991-14, it is not fair to vendors to allow the State to deny applicability of the Code after the competition is over.

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University Response

The University acknowledges the issues associated with this procurement. Because the 2015 procurement audit implied that University expenditures made on behalf of another entity were exempt from the code, the University subsequently treated this procurement as exempt while awarding the contract to the lowest of multiple quotes. The University acknowledges that capital improvements on University facilities are subject to the procurement code. Future University procurements on behalf of Student Housing, LLC will follow all regulations of the Procurement Code. University officials responsible for initiating and completing subsequent procurements similar to this one have been counselled and instructed to follow Procurement Code guidelines for such procurements in the future. The University will submit a request for ratification by June 15.

B. Retention Exceeded Amount Allowed by the Code

One construction project required retainage of 10% for six out of 13 Application and Certifications for Payment, which exceeds the 3.5% allowed by Code.

SC Code Ann. § 11-35-3030(4)(a) states, ... “the retained amount of each progress payment or installment must be no more than three and one-half percent.”

Recommendation: We recommend FMU develop and implement procedures to ensure compliance with the Code’s construction retention requirements.

University Response

The University agrees with the finding regarding the University accepting retainage greater than the 3.5% maximum as indicated in the code. The University project manager identified the 10% retainage offered by the contractor as beneficial to the state, therefore the project manager accepted the 10% rate. The PM misunderstood the code to believe that 3.5% retainage was the minimum retainage, not the maximum retainage. The University identified and corrected this problem during the course of the project. Seven of the thirteen applications and certifications for payment did meet the 3.5% retainage amount as identified by the code. The University is developing and implementing a more comprehensive construction checklist to ensure compliance with the code. All PMs will be extensively educated in the application of this checklist. The University will implement this procedure by June 30.

RESULTS OF AUDIT

II. Construction Indefinite Delivery Projects

A. Two Completed IDC Projects Were Not Properly Closed Out

Two IDC projects exceeded the agency's certification. Neither project received final approval of OSE before the final payment and retained funds were released and the project closed as required by the Manual for Planning and Execution of State Permanent Improvements (Manual).

According to the Manual, SE 685 General Conditions to Construction Services Indefinite Delivery Contract (4.4) Delivery Order Completion and Closeout, "...Projects exceeding the Agency's construction procurement certification level shall require an inspection by the OSE and the State Engineer's issuance of a Certificate of Occupancy..."

University Response

The University agrees with the finding regarding Indefinite Delivery Projects not properly closed out. We acknowledge that construction procurements valued greater than our construction procurement certification require inspection from the OSE and the State Engineer's issuance of a Certificate of Occupancy. The University is developing and implementing a more comprehensive construction checklist to ensure compliance with the code. All PMs will be extensively educated in the application of this checklist. The University will implement this procedure by June 30.

B. Performance and Payment Bonds Were Not Provided by the Contractor

The Agency did not obtain performance and payment bonds for two IDC projects as required for delivery orders (DO) over \$50,000. Total dollar amount for both projects was approximately \$285k.

SC Code Ann. § 11-35-3030(2)(a) requires performance bonds and payment bonds for construction contracts exceeding \$50k. Manual (2018) Section 9.5.3 (E)(1) states, "The agency must obtain Performance Bonds and Labor and Material Payment Bonds in the amount of 100% of the delivery order amount for all delivery orders exceeding \$50,000."

Recommendation: We recommend FMU develop and implement procedures to comply with the Code and the Manual pertaining to Construction IDCs. Refresher training should be provided for personnel responsible for procuring construction projects in accordance with the Manual.

University Response

The University agrees with the finding that performance and payment bonds were not provided by the contractor for two projects. We acknowledge that construction procurements valued \$50,000 or greater require that performance bonds and payment bonds be provided by the contractor in advance of the initiation of the work. The University is developing and implementing

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a more comprehensive construction checklist to ensure compliance with the code. All PMs will be extensively educated in the application of this checklist. The University will implement this procedure by June 30.

III. Construction Sole Source Procurement

One construction project totaling approximately \$100k was awarded as a sole source without required approval or public notice and was not reported to DPS. In addition, the agency did not obtain payment and performance bonds from the contractor.

Per SC Code Ann. § 11-35-1560 (A), A contract may be awarded for a supply, service, information technology, or construction item without competition if, under regulations promulgated by the board, the chief procurement officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer, determines in writing that there is only one source for the required supply, service, information technology, or construction item. Except for contracts with a total potential value of \$50,000 or less, adequate public notice of the intent to award without competition must be posted in South Carolina Business Opportunities.

Per SC Code Ann. § 11-35-3030 (a), Bid security is required for all competitive sealed bidding for construction contracts in a design-bid-build procurement in excess of one hundred thousand dollars and other contracts as may be prescribed by the State Engineer's Office."

Manual Section 8.4.5 (A) states "The Agency must require the Contractor to provide a performance bond and labor and material payment bond when the sole source procurement is for construction greater than \$50,000.

Recommendation: We recommend that FMU develop and implement procedures to ensure construction personnel follow the Code and regulations as outlined in SC Code Ann. § 11-35-1560 and reiterated in Manual Section 8.4, which outlines a step-by-step process for compliance.

University Response

The University agrees with the finding that this sole source procurement was not completed with required approval or public notice and not reported. Project manager followed the direction from the OSE to complete the sole source document, but did not complete additional requirements related to the sole source documentation. To ensure compliance with the OSE manual section 8.4, the University is developing and implementing a more comprehensive construction checklist to ensure compliance with the code. All PMs will be extensively educated in the application of this checklist. The University will implement this procedure by June 30.

IV. Small Construction Projects Between \$50k and \$100k

Required documentation for a construction project totaling \$67,271, including an SE 377 (Minor Construction Contract), SE 375 (Posting Notice of Award), and SE 580 (Building

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Construction Permit), was not provided. Without these documents we are unable to determine whether the procurement was conducted according to the Code and the Manual.

Manual 8.3.4 (D) (4) Posting Notice of Award, states, “After determining the lowest responsive and responsible source, the Agency will post the SE 375 at the location indicated in the Invitation and send a copy of the SE-375 and the Quote Tabulation electronically to all those who submitted a quote.” (5) “Before starting work the Agency must complete an SE 580, sign the Agency Certification and Approval, and provide a copy to the Contractor...” (E) “The Agency will complete and sign the Minor Construction Contract (SE 377) and send it to the Contractor for execution and securing bonds”. (F)) “The Agency shall obtain along with the executed contract, Performance and Payment Bonds....”

Recommendation: We recommend additional training be provided for construction personnel pertaining to small construction project procurements to ensure compliance with Manual Section 8.3.4(D), which addresses projects within the agency’s construction certification level. Management oversight should include proper review of small construction projects for compliance with the procurement steps as outlined in the Manual.

University Response

The University agrees with the finding regarding this small construction project. While three quotations were initially obtained, the solicitation of the project should have been redone when the estimates exceeded \$50,000. The University will provide additional training for construction personnel related to small construction projects to ensure compliance with OSE manual Section 8.3.4(D). Associate Vice President for Facilities Management shall review small construction projects for compliance with procurement steps as outlined in the OSE manual. The University will complete this by June 30.

V. Small Construction Projects Between \$10k and \$50k

A. Small Construction Project Executed Without Competition

One construction project worth \$25,540, was improperly executed as exempt from the procurement code. Additionally, the invoice was dated before the purchase order (PO). This resulted in an unauthorized or illegal procurement.

SC Code Ann. § 11-35-40(2) states, “This code applies to every procurement or expenditure of funds by the state under contract acting through a governmental body as herein defined irrespective of the source of funds...”

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Recommendation: We recommend that this procurement be reported as unauthorized or illegal as required by regulation.

University Response

The University acknowledges the issues associated with this procurement. Because the 2015 procurement audit implied that University expenditures made on behalf of another entity were exempt from the code, the University subsequently treated this procurement as exempt. Future University purchases on behalf of Student Housing, LLC will follow all regulations of the Procurement Code. University officials responsible for initiating and completing subsequent purchases similar to this one have been counselled to follow Procurement Code guidelines for such purchases going forward. The University will complete the ratification document and report to DPS by June 15.

B. Written Solicitations and Written Determinations Were Not Provided

The university did not provide written solicitations and written determinations for three projects totaling \$52,027.

Per Manual 8.3.3(B)4, “The Agency should make the purchase on a purchase requisition form with the following attached in the Agency file: (a) A copy of the written solicitation and written quotes; and (b) A statement documenting that the procurement is to the advantage of the State (price and other factors considered), including the administrative cost of the purchase.”

Recommendation: We recommend a management review of small construction project procurements to ensure compliance with the Manual, specifically Section 8.3.3(B)4.

University Response

The University agrees with the finding regarding these three projects. In each case, the University acquired at least three quotations for each job, but did not properly document the method for obtaining these quotes, and did not provide written statements for each documenting that the procurement was to the advantage of the State (price and other factors considered), including the administrative cost. The Associate Vice President for Facilities Management will review subsequent small construction project procurements to ensure compliance with the OSE manual, specifically Section 8.3.3(B)4. The University will complete these actions by June 30.

VI. Sole Source Procurements

Sole source and emergency procurements made pursuant to SC Code Ann. §§ 11-35-1560 and 1570, were evaluated to assess the appropriateness of the procurement actions and the accuracy of the quarterly reports submitted to the chief procurement officers as required by § 11-35-2440.

RESULTS OF AUDIT

A. Required Written Determinations Lacked Authorization

One sole source determination totaling \$13,671 was not properly approved by an authorized official. Approvals for twelve sole source determinations totaling approximately \$346k were not dated. Dating the determination is an integral part of compliance documenting that the authorization occurred prior to contract execution and without which we can only conclude that they were unauthorized or illegal.

Reg. 19-445.2105 C. (2) requires that, ...”The determination must be authorized prior to contract execution.”

Reg. 19-445.2015 (A) requires that, “upon finding after award that a State employee has made an unauthorized award of a contract or that it is otherwise in violation of law, the appropriate official may ratify or affirm the contract or terminate it in accordance with this section.... If the value of the contract exceeds \$100,000, the CPO must concur in the written determination before any action is taken on the decision.”

Recommendation: We recommend that these procurements be reported as unauthorized or illegal as required by regulation.

University Response

The University agrees with the finding regarding the sole source determination totaling \$13,671 not properly approved by an authorized official. The University obtained authorizations for twelve sole source justifications prior to execution, however dates were not documented with the signed authorizations. The University will report these procurements to DPS as unauthorized. The University will be diligent to assure that sole source justifications are authorized and dated appropriately. The University will complete the ratification document and report to DPS by June 15.

B. Written Determinations Were Inadequate

Required written determinations for two sole source procurements were inadequate.

One sole source procurement determination in the amount of \$20,948 relied on a letter from the vendor declaring they were the only vendor to supply the product to justify the procurement without competition. No other documentation of market research was provided.

The other sole source procurement in the amount of \$28,473 was approved after the work had been done. In addition, the individual that made the purchase did not have authorization.

The result is that both procurements were unauthorized or illegal and should be reported to DPS as required.

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Recommendation: We recommend that both procurements be reported as unauthorized or illegal as required by regulation. We also recommend procedures be developed and implemented to ensure that purchase requisitions are channeled through the Agency's procurement department for final approval before any work is performed by the vendor.

University Response

The University agrees with the finding regarding the written determination for the sole source valued at \$20,948 being inadequate. The University researched this item and found no other alternatives, however that research should have been documented and included with the sole source justification per the code. The University acknowledges the finding regarding the sole source procurement valued at \$28,473. The vendor continued work beyond the initial quoted amount for fire alarm service without permission from the University due to the proprietary nature of the service and life safety issue related to the service. Had the vendor immediately notified the University of the additional necessary work, the University would have then promptly completed an Emergency Procurement. In good faith, the University identified the additional work as a sole source due to the proprietary nature of the service provided. Rather than documenting this as a sole source, the University should have treated the purchase as an unauthorized purchase and reported to DPS. The University has consulted with the vendor to assure that when additional service is required, the vendor shall contact the University in advance prior to approval of the work. The University will complete the ratification document and report to DPS by June 15.

VII. Supplies and Services

Our review of supplies and services for the audit period identified the following issue:

Unauthorized and Illegal Procurements

One procurement totaling \$12,247 was made by someone not authorized to make purchases for the agency. Although the Procurement Director acknowledged the purchase was unauthorized, no written determination was prepared nor was it reported to DPS as required.

Recommendation: We recommend this unauthorized procurements be reported to DPS as required by Reg. 19-445.2015.

University Response

The University agrees with the finding for the procurement totaling \$12,247 as an unauthorized purchase. This purchase was ratified and allowed and was reported to DPS on 9/23/21.

RESULTS OF AUDIT

VIII. Revenue Generating Contracts

We tested five revenue generating contracts.

Contract files for three out of five contracts lacked important information. The vendor's bid documents (complete proposals) were not provided, which should have included the vendor's expected revenue over the course of the contract. Without documentation, we were unable to determine if the university complied with the procurement code regarding source selection method, proper postings of intent to award, and whether or not the contracts were within the agency's certification level. In addition, one Request for Proposal (RFP) was not advertised in SCBO as required by the procurement code.

Reg. 19-445.2000 (E) (3) Revenue Generating Contracts, states ""The Procurement Code applies even though the governmental body does not make a payment of money. Without limitation, examples of such contracts include revenue-generating contracts, concession agreements..."

SC Code Ann. § 11-35-1210(2) states, "Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

- (a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;
- (b) responsiveness to user needs;
- (c) obtaining the best prices for value received."

§ 11-35-1520(3) states, "Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. The notice must include publications in 'South Carolina Business Opportunities'..."

Recommendation: We recommend FMU update its internal procedures related to revenue generating procurements to ensure compliance with Reg. 19-445.2000 (E) (3) and aid in determining the proper source selection method. We also recommend updating internal policies to include proper organization and retention of complete contract files.

University Response

The University acknowledges that two revenue contracts did not include estimated contract values on their respective Statements of Award. Each of these contracts have estimated values for the lengths of their contracts of well below \$100,000 therefore the Statement of Award was the proper document for notification of award. However, the University accepts that the value of the award is necessary for auditors to assess proper procurement methods. The University agrees with the finding regarding one revenue contract not having been advertised in SCBO. While multiple

RESULTS OF AUDIT

vendors were contacted to be invited to provide a proposal, the University recognizes that all requests for proposals are required to be advertised in SCBO. The University will review its internal procedures related to revenue generating procurements to ensure compliance with the code and regulations, and will update internal policies to properly maintain complete contract files. The University has reviewed the internal procedures and will submit an updated internal procurement manual to MMO for consideration by June 9.

IX. Purchasing Cards (P-Cards)

FMU had 92 P-Cards in use during the audit period and spent \$5,364,775 in approximately 17,522 transactions. Based on the volume of usage, there is increased risk that misuse, or abuse of P-Cards will not be prevented or detected without adequate management oversight.

Program Administration

We reviewed FMU's P-Card policies and procedures for compliance with the State P-Card Policy and identified areas of non-compliance.

A. Roles and Responsibilities

Twenty-one cardholders were the liaisons of their own card. In addition, the agency's internal P-Card policies allows cardholders to be the liaison of their own card.

Per State P-Card Policy, V. (A) states, "Each Agency's internal P-Card policy must establish an internal control process and structure that ensures compliance with the Code and State P-Card Policy. Internal controls shall include: (1) Appropriate separation of duties between transactions (Cardholders), review and approval of transactions for payment (approving officials), and payment of the cardholder monthly bank statements (Accounts Payable)...(3) Appropriate hierarchical review and approval of purchases by someone with supervisory authority over the Cardholder and/or with authority to question purchases if needed."

Recommendation: We recommend FMU revise its internal P-Card policies and procedures to include roles and responsibilities of P-Card personnel, including liaisons, and provide for adequate separation of cardholder, supervisor, and liaison duties.

University Response

The University agrees with the findings regarding the University's Purchasing Card roles and responsibilities. The University will revise its internal P-Card policies and procedures to provide greater detail on the roles and responsibilities of P-Card personnel including liaisons, and will provide for adequate separation of cardholder, supervisor, and liaison duties as specified by the State of SC Purchasing Card Policy and Procedures. This revision will be completed by June 9.

RESULTS OF AUDIT

B. Bank Statements Lacked Timely Management and Cardholder Signatures

The Agency did not follow its internal procedures pertaining to timely management and cardholder signatures on P-Card statements.

There were three P-Card statements out of 26 tested that were not signed timely by the manager/approver. In addition, two P-Card statements were signed by the manager but not dated. Therefore, compliance with the State P-Card policy could not be determined.

Three P-Card statements were not signed in a timely manner by the cardholder.

FMU's P-Card Manual states "P-Card forms and other documents had to be approved by the 15th of the month".

Recommendation: We recommend FMU provide refresher training for cardholders and managers who have oversight responsibility for P-Cards, and develop and implement procedures requiring timely approvals evidenced by dating signatures on cardholder statements.

University Response

The University acknowledges the issues related to the finding of bank statements lacking timely management and cardholder signature. Specific cited statements lacking timeliness of signatures were due to two factors. The University closed prior to Thanksgiving in November 2020 and re-opened later than normal in January 2021 due to the COVID pandemic. Also, the regularly scheduled semester break took place during that period. The University will revise the Internal P-Card manual with processes to assure that statements are signed or alternate verification is obtained by the University's deadline of the 15th of the month after the receipt of the prior month's statement. This revision will be completed by June 9.

X. Limitations of the Expenditure List Provided

FMU's expenditure list provided appeared to have more direct pays than purchase orders (PO). Total direct pay expenditures were 14,457-line items, but there were multiple expenditures listed within one line item. There were 1,616 PO line items that also listed multiple expenditures within one line item. The listing also was in a text format, which made it difficult to work with or sort. When we asked management to provide us a workable expenditure report, a second report was provided, with the same issues. We were not able to determine total spend per fiscal year.

Management provided a separate list of 303 blanket POs during the audit period, none of which were included on the expenditure list provided.

We tested 31 direct pays. Out of the 31 tested, ten blanket POs were provided as back up documentation, indicating these were not direct pays.

RESULTS OF AUDIT

The end result is the expenditure list provided could not be relied on to determine the number of expenditures or line items or the correct number and dollar amount of POs or direct pays.

Recommendation: We recommend FMU evaluate its ERP system's reporting capabilities, and its workflow procedures to ensure key information such as PO numbers, including blanket POs, are captured and reportable.

University Response

The University acknowledges that the format of the excel spreadsheets provided did not foster ease in manipulation of provided data. All data points requested by the auditor in the Audit Planning Memo were provided in the second report. The University will continue to work toward improved communication with auditors in the future such that subsequent audits yield the data necessary for a more efficient audit. The FMU VP for Finance and Facilities and the Director of Audits from MMO have discussed this issue extensively to better understand the information sent and received in order to avoid these issues in the future.

XI. Minority Business Reports Filed Late

FMU did not submit required MBE annual utilization plans, along with four out of 12 quarterly progress reports, in a timely manner.

Recommendation: We recommend FMU develop and implement procedures, including management review and approval, to require annual MBE utilization plans and quarterly progress reports be submitted to the SMBCC in a timely manner as required by SC Code Ann. § 11-35-5240 (2).

University Response

The University agrees with the finding that the University did not submit required MBE annual plans, along with four of the twelve quarterly progress reports, in a timely manner. The University representative responsible for these reports is no longer employed in a procurement role at the institution. The University presently employs procedures for completion of these reports, and will implement review and approval by the Director of Purchasing to assure the timeliness of the submittal of these reports. This is currently underway and will be completed immediately.

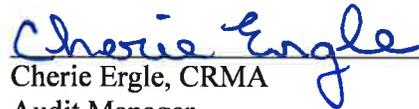
CERTIFICATION RECOMMENDATION

We believe corrective action based on the recommendations in this report will make Francis Marion University's internal procurement operations consistent with the South Carolina Consolidated Procurement Code and ensuing regulations.

As provided in SC Code Ann. § 11-35-1210, we recommend that the Francis Marion University's procurement authority to make direct university procurements be re-certified/increased/reduced up to the following limits for three years:

<u>PROCUREMENT AREAS</u>	<u>RECOMMENDED CERTIFICATION LIMITS</u>
Supplies and Services ⁹	*\$ 325,000 per commitment
Information Technology ¹⁰	*\$ 200,000 per commitment
Construction Contract Award	\$ 50,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 25,000 per amendment

* Total potential purchase commitment whether single year or multi-term contracts are used.



Cherie Ergle, CRMA
Audit Manager,
Audit & Certification



Crawford Milling, CPA, CGMA
Director, Audit & Certification

⁹ Supplies and Services includes non-IT consulting services

¹⁰ Information Technology includes consulting services for any aspect of information technology, systems and networks

End Notes

ⁱ Regulation 19-445.2020 Certification

(A) Review Procedures.

(2) The Materials Management Officer shall review and report on the particular government body's entire internal procurement operation to include, but not be limited to the following:

- (a) Adherence to provisions of the Code and these Regulations;
- (b) Procurement staff and training;
- (c) Adequate audit trails and purchase order register;
- (d) Evidence of competition;
- (e) Small purchase provisions and purchase order confirmation;
- (f) Emergency and sole source procurements;
- (g) Source selection;
- (h) File documentation of procurements;
- (i) Decisions and determinations made pursuant to section 2015;
- (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers;
- (k) Adequacy of written determinations required by the Code and these Regulations;
- (l) Contract administrations;
- (m) Adequacy of the governmental body's system of internal controls in order to ensure compliance with applicable requirements.

(3) The report required by item A(2) shall be submitted to the board.



May 31, 2022

Mr. D. Crawford Milling
Director, Audit and Certification
Office of Audit and Certification
1201 Main Street, Suite 600
Columbia, SC 29201

Dear Mr. Milling:

Thank you for providing the Francis Marion University Independent Procurement Audit for the period January 1, 2018 – December 31, 2020. The Procurement Audit provides Francis Marion University with the opportunity to amend our procedures to ensure compliance with the guidelines of the procurement code and best serve the State of South Carolina. Several of those changes have already been implemented. Additionally, I appreciated the opportunity to meet with you and discuss the audit report and various manners to address the included items.

The University has worked over the past few months to address issues raised during the audit process, especially those involving construction procurements. We are developing a more comprehensive checklist to be implemented by June 30 to ensure that construction procurements are compliant with the code. Furthermore, members of the facilities management department with procurement responsibilities will complete additional training (including a thorough review of the OSE manual), especially regarding small construction projects. Members of the FMU Facilities staff will also review and reference OSE Presentations provided at the Department of Procurement Services website. The facilities team will complete the training by June 30.

The University also has initiated updates to general procurement procedures and procurement card management. The University's Internal Procurement manual will be updated and provided to the Office of Audit and Certification for consideration by June 9. Management of the procurement card program is being refined to ensure timely signoff of statements and to assure that all cardholders, liaisons, and other P-Card administrators are thoroughly trained regarding their role. The University's P-Card Manual will be updated no later than June 9; refresher training for P-Card responsibilities will begin immediately following the completion of the P-Card manual.

We will continue to refine procurement policies and procedures when necessary and welcome input at any time. We appreciate your recommendation for the requested increases to certification levels for supplies and services, and for information technology. Thank you for your assistance and support.

Sincerely,

Darryl L. Bridges
Vice President for Finance and Facilities
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