

Contract Assignments—Why It’s Usually More Than “Just a Name Change”

By: Will Butler

“It’s basically just a name change!”

Those words. Again. Sure enough, the contractor’s email concludes by asking if the purchase order can be sent over by the close of business. She hears whispers down the hall. *What’s the big deal? What is so hard about a couple of clicks? What could possibly take her so long?* But she’s been here before. She knows she’s the only one that can get this right, and the clock is ticking. She feels the contractor smile at her knowingly from the other side of the screen... *JUUUUUST A NAAAAAME CHAAAAANGE...*

The procurement manager wakes up in a cold sweat. That nightmare. Again.

But our unnamed protagonist is not alone—we’ve all been told “it’s just a name change.” Many of us know from experience that “it’s just a name change” can be a loaded phrase, usually tossed around (incorrectly) in casual conversation. Often the phrase misrepresents the significance of the “name change” and the effort it takes to verify the actual change.

“But wait!” you might say. “What *IS* the big deal about a contractor changing its name?” Well, first of all, have *you* ever changed your name? I’m sure many of you have. After our wedding, my wife visited the federal Social Security Administration office to get her last name changed, and she came home *weeping*—and that was after her *third visit!* I heard it all—about how picky they are for needing certified copies not photocopies, how they need your marriage license and not the marriage certificate...and by the way, you do have your birth certificate handy, don’t you?

The point is that the law takes legal names very seriously, and with good reason. To be a part of a functioning society, it’s important that societal institutions are able to hold its members accountable and maintain a record of *who* is accountable for *what*.

It’s the same thing with state contracting. We already know who we were originally contracting with (for an in-depth overview of the importance of evaluating an offeror’s responsibility, look back to Michael Speakmon’s article split across the [April 2021 and May 2021 editions of DisPatches](#)). We need to ascertain who it is that we are continuing to hold accountable for the contract.

Just as important as the “who” are the “why” and the “how.” It’s actually pretty rare for a successful, established company to change names spontaneously. For example, Coca-Cola would not change its name and thereby undo 130 years of work building up the reputation and goodwill that the Coca-Cola name evokes. Are there ever any good reasons to change a name? Sure. A company named “Just Pencils” may change its name to something like “Office HQ” if it branches out from pencils and starts selling paperclips and staplers. Sometimes external circumstances change, too:

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“COVID Foods” might have been a perfectly cromulent name for a company in 2018 (if not a little dry), but that name would have long since become a business liability.

So these scenarios are the exceptions, not the rule, and they are rare in state contracting. Almost always, when we see a name change it’s indicative of some other underlying corporate activity. Such activities could include **mergers, acquisitions, stock purchases, restructurings, or any combination thereof.**

And yeah, that’s a big deal. Frequently, the result is a company unrecognizable from the one with whom you entered into the contract. When any one of these scenarios is the case, you need to examine several things, like:

- Is the contractor still the same legal entity?
- Has the type of corporate entity changed (e.g. LLC to corporation)?
- Is the contractor under different ownership?
- Who were the transacting parties?
- Is there sufficient documentation of the transaction?
- What happened to the former entity?
- Does the changed entity retain the former entity’s assets?

Essentially, you need to make sure that even though this isn’t the same girl you asked to the dance, you’d still be comfortable taking her home to meet the parents. That means ensuring that we know exactly who will be responsible for contract performance (and having the confidence that this entity will be able to fully perform).

Background

You in the back—what’s that? This article hasn’t contained enough citations and procurement-speak to justify your DisPatches subscription? I hear your concerns, nerd, so let’s back up for a minute and take a broader look at contract assignments.

The fact is, there’s a tension at work behind the scenes that is somewhat unique to state contracting. In general, contract law favors assignability. Under the common law, contracting parties’ rights and obligations generally are freely assignable. This is similar to the common law’s preference for free alienation of one’s property rights (i.e. a property owner’s right to transfer his property to another). The Uniform Commercial Code’s Article 2 – a model code for governing commercial transactions for the sale of goods – states further that unless otherwise agreed, and with several important exceptions, “[...] all rights of either seller or buyer can be assigned [...]” as a general principle.

However, in state contracting we answer to a higher power than the UCC: namely, the S.C. Consolidated Procurement Code. Section 11-35-60 of the Code outlines how the State establishes Regulations for implementing the Code. One of these regulations, **R. 19-445.2180(A)**, categorically states that “[n]o State contract is transferable, or otherwise assignable, without the written consent of the Chief Procurement Officer, the head of a purchasing agency, or the designee of either; provided, however, that a contractor may assign monies receivable under a contract after due notice from the contractor to the State.” That is, the language that we start from is not permissive but prohibitive. Why is this? Well, I’m not qualified to answer that question. However, you can look to the nature of public procurement personnel as stewards of taxpayer dollars. We do not enter into these contracts to serve our own interests, but rather to serve the interests of the State and its citizens. Extra safeguards and precautions are thus necessary to protect these interests. The bottom line is, it’s the law.

That’s not to say that assignments are bad—in fact, often they are for very good reasons. We want to contract with good, strong businesses that can sell us the best products and perform the best services. The strongest businesses always look for opportunities to grow, weaknesses they can improve, and inefficiencies they can erase. Two common ways that they can achieve these goals are (1) merging with another business partner, or (2) consolidating or reorganizing internally. To accommodate these practices and other circumstances, **R. 19-445.2180(B)** allows that “[w]hen in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that: (1) the transferee assumes all of the transferor’s obligations; (2) the transferor waives all rights under the contract as against the state; and (3) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.”

So now, how do we get there? What does procurement do to facilitate this? WHAT DO WE DO?

Wait, what is it we do?

Paperwork Party! Remember, we need to know who the contractor has become, and we need to have confidence that they can perform under the contract. We need a clear explanation of the nature of the change, accompanied by thorough documentation of any transaction(s) effecting such change. Make sure that the party names in the documentation match up **exactly** with the names you were expecting to see. Corporate maneuvering can involve multiple parties in multiple stages, and the most complicated changes can look pretty byzantine when you put it on paper. Consult with your internal legal counsel to help you examine the documentation of each transaction and pierce the veil of mystery. Next, those financial statements aren't going to tell on themselves, so go ahead and ring up your accounting department for assistance to make sure that the contractor isn't going to go Enron on you.

Call for Backup! Typically, corporate changes like these require a company to apply for a new tax identification number or FEIN. When this happens, the procurement manager takes a backseat to our friends at the Comptroller General's Office (and maybe the State Treasurer's Office?) or the equivalent authorities for political subdivisions. They may have their own questions for the contractor before making the determination whether the contractor qualifies for a new vendor record. Until any vendor record issues are resolved, you'll have a problem issuing a valid purchase order. Historically, this happens when you most urgently need a PO to be issued.

Change That Contract! We can't handle these changes with a simple change order alone. The procurement manager needs certain assurances from the involved parties before we can do this, and he or she must take other due diligence measures to ensure that the contract is binding as to the appropriate parties. Otherwise, good luck getting the written consent required by R. 19-445.2180(A). You've already involved your legal if you've been doing this by the book, and you're going to want to keep them informed so they can look over any agreement between the parties and the State. After this agreement is in place, you can finally get to those administrative steps—you know, the "couple of clicks" part that every other department thought was all there was to this "name change" business in the first place.

Or...? Back to the true "just a name change" scenario – R. 19-445.2180(C) states that the procurement manager may effect that change upon receipt of the documentation and written confirmation that no other terms and conditions of the contract have changed. The only potential roadblocks are verifying that (1) the name change has been legally effected, and (2) it is, in fact, "just a name change." The regulations make it a lot simpler when it truly is "just a name change." After all, we wouldn't want our fellow state employees to tell their friends and loved ones that the State is serving up "COVID Foods"!



Congratulations to our fellow SCAGPO Members who have successfully completed the Spring 2021 UPPCC Certification Examinations.



UPPCC ANNOUNCES NEW RECIPIENTS OF THE CPPO AND CPPB – SPRING 2021

First Name	Last Name	Credential	State/Province	Country
Melinda	Adams	CPPB	SC	USA
Willie	Atienza	CPPB	SC	USA
Ashley	Kennedy-Shell	CPPB	SC	USA
Elizabeth	Marsh	CPPB	SC	USA
John	Tigert	CPPB	SC	USA
Stacy	Adams	CPPO	SC	USA
Michael	Speakmon	CPPO	SC	USA



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Statewide Contract News

SPECIAL NOTICE

Online Reverse Auction Services -- EASiBuy LLC is the new statewide term contract vendor for **online reverse auction services**. Since 2009, EASiBuy has been a leading eSourcing and reverse auction solution. Currently, they work with some of the largest states and municipalities in the United States such as New York, Connecticut, Rhode Island, Vermont, Oregon and cities such as Los Angeles, Chicago, and Mesa. The OSP is currently working with EASiBuy to implement the appropriate policies, procedures, and workflows to ensure adherence to the Procurement Code for all reverse auctions. Once this initial onboarding is complete, we will be holding an informative session with EASiBuy so you can meet the account manager and get a better understanding of the new contract. We will announce this date as soon as possible and encourage everyone to participate!

STC Print Management Program -- The OSP anticipates publishing a RFP Solicitation on July 29th for STC Print Management Program with an anticipated award date in early December 2021. This contract would replace our current contract for **'NASPO Copiers and Print Output Devices and Services.'** We are looking for two – three more panel members to serve on the RFP Panel. Please contact Randy Barr, Sr. at rbarr@mmo.sc.gov or 803-896-5232 if you are interested.

Auto Parts -- The NASPO contracts for **Auto Parts** have been extended until October 19, 2021. Visit the contract page for specific details. <https://procurement.sc.gov/files/contracts/Light%20Duty%20Auto%20Parts%20CS%2007%2021%202021.pdf>

Park and Recreation Equipment -- The NASPO contracts for **Park and Recreation Equipment** have been extended until December 1, 2021. Visit the contract page for specific details. <https://procurement.sc.gov/files/contracts/Park%20Recreation%20and%20Playground%20Equipment%20Contract%20Sheet%2003.31.2021.pdf>



Fire Sprinkler Testing & Inspection – We have spent several months doing research, including speaking with vendors and specialists in the field, trying to develop a way to create a STC to provide fire sprinkler system testing and inspection services. Unfortunately, what we learned was that the vendor community needs us to provide far more information than we are able in order to make an effective contract. For example, we would need to provide the number of buildings, how many floors each building has, how many sprinkler heads per floor, how many pumps, and on and on and on. As you can imagine this just isn't possible for a statewide term contract. We will monitor the industry and will place a notice in Dispatches if we determine a way forward in the future.

Market Research and Agency Input Requests for NEW State Term Contracts (STCs)

The Office of State Procurement (OSP) is seeking input on the following recommendations for new State Term Contracts (STC). If you have any information you can share, please contact the appropriate procurement manager. Our goal is to put contracts in place that will meet your needs, but we need your input to ensure success.

CradlePoint – Randy Barr (rbarr@mmo.sc.gov) is conducting market research into creating a new STC for “Cradlepoint.” We have received numerous requests from school districts and agencies but are looking for additional input and information from other agencies and school districts who might utilize this contract. Please email Randy Barr with your details on your current or anticipated usage.

SAS * Cloud Analytics -- Randy Barr (rbarr@mmo.sc.gov) is conducting market research into creating a new STC for “SAS Cloud Analytics” based on several end user requests. Please email Randy Barr with input, if you are a current user or would like to see this as a new STC.

VM Ware -- Randy Barr (rbarr@mmo.sc.gov) is conducting market research into creating a new STC for “VM Ware” based on several end user requests. Please email Randy Barr with input, if you are a current user or would like to see this as a new

STC.

Varonis -- Randy Barr (rbarr@mmo.sc.gov) is conducting market research into creating a new STC for “Varonis” based on several end user requests. Please email Randy Barr with input, if you are a current user or would like to see this as a new STC.

Telematics (Fleet Monitoring) – Will Butler (wbutler@mmo.sc.gov) is resuming market research into creating a new STC for aftermarket telematics solutions for vehicles, “yellow iron” powered assets, and non-powered assets. Please email Will Butler with information about your fleet management needs.

Emergency Restoration Services – This came to us as a recommendation from Horry County and has a very broad scope of services to be provided during/after an emergency event. Services include fire damage restoration, water damage remediation, mold remediation, associated equipment rental and some specialty services. If you would like more information or if you have an interest in this service as a potential new STC, please contact Ellicia Howard at ehoward@mmo.sc.gov. We will need a great deal of information to include potential specifications/scope of work details to ensure the contract meets needs across the state.

Market Research and Agency Input Requests for existing State Term Contracts

Information Security and Privacy Services (Expires 4/21/2022) – This office still needs your input on the current “ISPS” contracts and what you’d like in a new contract! The ISPS services provided under this contract portfolio are currently divided into 7 Lots:

Lot 1 – Security Monitoring Analytics	Lot 2 – Security Incident Response Management
Lot 3 – Security Infrastructure Support	Lot 4 – Distributed Denial of Service
Lot 5 – Security Assessments and Other Consulting	Lot 6 – Application Security Assessment and Remediation
Lot 7 – Privacy Support Services	

If you have any input, questions, or concerns regarding how the existing contract is structured or functioning, or the services delivered under this contract (in general or for a particular ISPS contractor), please contact Will Butler at wbutler@mmo.sc.gov.

Interview Room / In-Car (Local Storage Only) / In-Bus Digital Video Recording Systems (Expires 6/11/21) – With the current contracts scheduled to expire June 11, 2022, this office is starting the market research process. **We are especially interested in gauging the ongoing need for video recording systems that utilize on-premise premise local storage (e.g. hard drives) as opposed to cloud-based storage.** Please email Will Butler at wbutler@mmo.sc.gov with any input.

Mobile Device Management (5400012111) (Expires 12/08/21) – The OSP remains in the solicitation development phase and are rewriting the scope of work. If you have any input, questions, or concerns regarding how the existing contract is structured or functioning, **or would like to serve on the evaluation committee**, please contact Randy Barr, Sr. at rbarr@mmo.sc.gov as soon as possible.

Medical & Surgical Supplies (Expires 2/16/2022) – Portia Davis (pdavis@mmo.sc.gov) has already reached out to our vendors and asked for information on what our users are buying that is not already in the market basket. If you feel that we need to add something specific to the market basket (to get better pricing) contract Portia ASAP with that information for us to consider.

Drug & Alcohol Testing and Background Screening (Expires 2/26/2022) – Michael Speakmon (mspeakmon@mmo.sc.gov) will be hosting an MS Teams meeting on **August 24, 2021**, to have a discussion about the options available to us through the use of MMCAP’s contracts for these services, and to gather input from the users. **If you, or**

someone from your organization, is interested in participating, contact Michael no later than August 20, 2021. He will send out the invite the day before the meeting.

Traffic Signal Controllers (Expires 4/4/2022) – Portia Davis (pdavis@mmo.sc.gov) is beginning her research into the next iteration of this contract. DOT creates and monitors the specifications for this contract so if you have any input concerning the specifications, please let Portia know so she can contact DOT and prove them with your input.

Industrial Gases – Cylinder Exchange (Expires 4/30/2022) – DeAna Reed-Sharpe (drsharpe@mmo.sc.gov) is beginning her research into the next version of this contract. The contract seems to be working well as currently constructed and we seem to have a good list of gasses that are specifically priced in the contract, and we have other gasses available at a discounted cost. Are there some gasses that are being used on a regular basis that we can add to the list of gasses that are specifically priced to get a better price? Are there gasses that are somehow not covered by the contract that we need to look at? If so, please contact DeAna ASAP.

LIDAR and RADAR (Expires 5/24/2022) – Portia Davis (pdavis@mmo.sc.gov) is responsible for this contract. The Department of Public Safety (DPS) is responsible for producing the qualified products list for these products. If your local law enforcement agency wants a specific product included, they need to reach out to their counterparts in DPS to have those products tested and approved as quickly as possible.

E10 Ethanol Blended Gasoline (Expires 7/10/2022) – Ellicia Howard (ehoward@mmo.sc.gov) is beginning her analysis into the next iteration of this contract and would appreciate any input that your organization may have on the effectiveness of the contract as it is currently structured or any suggested improvements you might have.

Meals, Ready-to-Eat – Emergency Supplies (Expires 7/29/2022) – Portia Davis (pdavis@mmo.sc.gov) is beginning to develop the business case for continued contracting for MREs. While it's pretty much a no brainer that we will continue providing these under contract, now is the time to give your thoughts on the quality of MREs on contract and offer some ideas about what we could do to improve them.

State Term Contracts that will NOT be renewed or resolicited

Mosquito Control Services (Expires 4/17/2022) – LAST CALL FOR MOSQUITO CONTROL SERVICES! This is a contract for aerial application of mosquito pesticides. We are not receiving any input in support of resoliciting this STC. We have talked with the contractor about this, but we are really looking for input from the potential users, especially those working at the county level. **Please pass this information on to whoever manages your mosquito control program and have them contact Ellicia “Skeeter” Howard (ehoward@mmo.sc.gov) so she can speak directly with them about this contract and its use.**



Electrostatic Disinfection Services (Expires 6/9/2022) – These contracts were put in place during COVID-19 as everyone was planning to return to the office and the kids to school, and the initial intent was for these contracts to not be more than two years. The information we are receiving is that the use of electrostatic disinfection is not as effective in fighting COVID-19 as originally thought at the time, and that DHEC is recommending the use of routine cleaning and disinfection of facilities and high touch areas ([link is below](#)). If you or your entity believe we need to continue providing these services after June 9, 2022, please contact Ellicia Howard at ehoward@mmo.sc.gov as soon as possible.

<https://scdhec.gov/sites/default/files/media/document/Parents-School-COVID-19-FAQ-5.11.21.pdf>

Currently Published Solicitations

Check Point Products and Services (5400021588) – The new solicitation for Check Point Products and Services has been published. It includes Firewall Equipment, Network Hardware, Security Hardware and Software, and more. You can find the solicitation here: <https://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitationnumber=5400021588> Please contact Will Butler (wbutler@mmo.sc.gov) with any questions.

Digital Government Services (Formerly: Self-Funded Web Portal) – The current contract **4400008796** resulting from solicitation 5400007500 **expired 7/15/2021**. Solicitation **5400021069** has been created and has been published [here](#) with an award date tentatively scheduled for December 2021. This will allow a six (6) month period for transitioning as appropriate.

For details on this State Term Contract, please visit SFAA's Procurement Services Web Portal webpage, [Information Technology Management \(sc.gov\)](#). Additional updates will be provided as necessary. If you have any questions or concerns, please contact Kimber Craig, at kcraig@mmo.sc.gov.

STC Ruckus Wireless (5400021573) – This solicitation was published on June 10, 2021 with bid opening on July 22, 2021. We anticipate an award date of August 3rd, 2021. If you have any questions or concerns, please contact Randy Barr, Sr. at rbarr@mmo.sc.gov

Purchase Card Program (Pcard) (5400020074) -- We remain in the evaluation process for this solicitation but do not anticipate a break between the old and new contracts. Reach out to Ellicia Howard if you have any questions or concerns regarding this contract (ehoward@mmo.sc.gov)

Educational Consulting (5400020964) – DeAna Reed-Sharpe (drsharpe@mmo.sc.gov) is currently evaluating offers received and we anticipate publishing the awards before the end of July 2021.

Battle dress Uniforms (5400021519) – DeAna Reed-Sharpe (drsharpe@mmo.sc.gov) published Amendment #1 on July 12, 2021 with the bid opening date remaining as July 28, 2021. A link to the solicitation documents is below. <https://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400021519>

ADA Buses (5400021385) –Portia Davis (pdavis@mmo.sc.gov) is continuing to review the questions we received after the pre-bid meeting. She issued Amendment #1 on July 16, 2021, postponing the bid opening until such time as we can finalize our responses to the questions. We do not anticipate a break between the old and new contracts. A link to the solicitation is below. <https://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400021385>

Microscopes (5400021700) – Portia Davis (pdavis@mmo.sc.gov) published this solicitation on July 16, 2021. This is a NEW STC that was recommended to us by Clemson, with input from them and some other higher education institutions. The pre-bid is scheduled for July 29, 2021, the bid opening will be August 26, 2021, with a potential award posting date of September 16, 2021. You can access the solicitation using the following link:

<https://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400021700>

If there are additions or changes your agency would like to see in order to utilize the new STC, please contact Portia immediately so they can be considered in an amendment.

Household Appliances (5400021854) – Portia Davis (pdavis@mmo.sc.gov) did not receive any questions after the scheduled pre-bid so there is no change to the bid opening date of August 4, 2021. A link to the solicitation documents is included for reference: <https://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400021584>



Remember that the recently awarded STCs for **Commercial Appliances and Smallwares/ Kitchen Equipment** can be accessed here.

Newly Awarded State Term Contracts (STCs)

Concrete Culver Pipe (5400021658) – Michael Speakmon (mspeakmon@mmo.sc.gov) processed a second solicitation to evaluate offers for the three lots that we did not receive a response for the first time. Michael **did NOT receive any responses** on the second solicitation. He'll reevaluate the market conditions later this year and determine if it is possible to successfully solicit for those three lots at that time. The affected lots are Lot 5, Lot 6 and Lot 8 which can be found at the link below. <https://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400021658>

Trash Can Liners (5400020368) – Portia Davis (pdavis@mmo.sc.gov) published the awards on July 12, 2021 as scheduled and the new contracts became effective on July 22nd with a start date of August 3, 2021. Contract sheets will be updated at that time.

Currently Advertised Cooperative Contracts

PCs, Servers, Storage, Peripherals – Our office is currently working with manufacturers to extend our current Participating Addenda for the NASPO ValuePoint Computer Equipment portfolio in alignment with the Master Agreements, which have been extended through July 31, 2022. If you have any questions or concerns, please contact Will Butler., at wbutler@mmo.sc.gov

Mailing Equipment, Supplies, and Maintenance – Our office has posted an Intent To Participate in the upcoming NASPO Mailing Equipment, Supplies and Maintenance Solicitation. If you have any questions or concerns, please contact Carol Norfleet., at cnorfleet@mmo.sc.gov.



**PROCUREMENT
SERVICES**

A little about us... Procurement Services is a part of the South Carolina State Fiscal Accountability Authority (SFAA). The Division of Procurement Services has a broad array of functions, which include the following:

- ⇒ *Establishing open-ended statewide contracts, thereby leveraging the collective needs of all state agencies and political subdivisions to gain lower prices through volume discounts.*
- ⇒ *Providing agencies with professional, centralized purchasing services to acquire all manner of supplies, equipment, services, information technology, and construction.*
- ⇒ *Publishing a periodical, South Carolina Business Opportunities (SCBO), that provides one-stop access to public notice of contracting opportunities for the business community.*
- ⇒ *Providing for the protection of life and property by serving as the Building Code Official and Deputy State Fire Marshal for all state buildings and by performing professional reviews of construction plans and site inspections.*
- ⇒ *Preparing and delivering procurement-related resources to all state agencies, including standard contracts and procurement forms, written guidance on best practices, and expertise for answering complex questions.*
- ⇒ *Furnishing a timely, meaningful, and inexpensive process for resolving bid protests and contract disputes for state government.*
- ⇒ *Providing training for agency procurement staff on best practices and procurement laws.*
- ⇒ *Facilitating uniformity in application of procurement laws among diverse procurement disciplines and across state government.*
- ⇒ *Ensuring transparency and integrity in the expenditure of public money by auditing and assessing internal agency procurement controls and processes.*
- ⇒ *Staffing emergency disaster recovery procurements (hurricanes, terrorism, etc.) for the State's Emergency Management Division. In an emergency situation, Procurement Services is responsible for acquiring supplies, services, and facilities damage assessments.*