

## Emergency Procurements Related to the COVID-19 Pandemic

When circumstances justify, the emergency procurement rules play an important role in balancing the many competing public policy goals of our procurement laws. In a nutshell, they are designed to excuse compliance with competitive processes—but only to the extent necessary to meet an emergency need. This article is offered as a reminder of the basic framework for emergency procurements.

In response to emergency conditions related to the COVID-19 pandemic, Governor McMaster directed state agencies and departments to use emergency procurement procedures “as necessary and appropriate, to facilitate and expedite acquisition of any critical resources during the State of Emergency.” Executive Order No. 2020-11. The Governor, however, did not suspend the application of the Procurement Code. Rather, the Governor suspended strict-compliance with procurement-related regulations “if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency.” *Id.*

Subject to Governor McMaster’s Executive Order 2020-11, SFAA offers the following additional guidelines:

Not every procurement related to the pandemic qualifies as an emergency. First, there must be an “immediate and serious need . . . the lack of which would seriously threaten: (1) the functioning of State government; (2) the preservation or protection of property; or (3) the health or safety of any person.” R. 19-445.2110B. Second, the conditions must be such that the need “cannot be met through normal procurement methods . . .” Third, the procurement must be limited to those items “necessary to meet the emergency.” R. 19-445.2110C.

If possible, agency procurement staff should obtain approval from the head of a purchasing agency (or a designee). R. 19-445.2110D.

The Code requires that all “emergency procurements shall be made with as much competition as is practicable under the circumstances.” In meeting this requirement, an agency should select a procedure that assures the procurement is completed “in time to meet the emergency.” R. 19-445.2110E. For example, if competitive sealed bidding pursuant to § 11-35-1520 were the normal procurement method and the emergency need cannot be met using that method, perhaps three written quotes would qualify “as much competition as is practicable.” In other circumstances, the need may be so urgent that even receiving written quotes is impracticable. Procurement managers must use their best judgment when determining how much competition is practicable under the circumstances. However, “[t]he existence of an emergency . . . does not justify the wholesale suspension of the basic policies and safeguards built into the Procurement Code. Even in an emergency, an agency must act fairly and ethically towards all parties concerned.” *Protest of Homer L. Spires*, Panel Case No. 1988-6.

The law regarding emergency procurements was changed by Act 41 of 2019 to require after-the-fact notice of emergency procurements with a total or potential value exceeding \$50,000. S.C. Code § 11-35-1570(B). The notice must contain a statement of the right to protest and be posted in South Carolina Business Opportunities (SCBO) “as soon as practicable thereafter.”

Emergency procurements must be supported by a written determination that provides “sufficient factual grounds and reasoning to provide an informed, objective explanation” of “the basis for an emergency procurement and . . . the selection of the particular contractor.” R. 19-445.2110G.

For small purchases, agencies may consider using the small-purchases procedures found in § 11-35-1550 and R. 19-445.2100 in lieu of conducting an emergency procurement. For example, for purchases not exceeding \$10,000, competition is not required so long as the price is reasonable. S.C. Code § 11-35-1550(2)(a).





## Statewide Contract News

### State Term Contract Updates for the May 2020 Edition of *DisPatches*

*Editor's Note: We've found that Adobe may render some of our links broken. Please copy and paste addresses into your browser's address field for any links not responding. We apologize for the inconvenience.*

#### **COVID-19-Specific Issues**

**Mandatory Use of State Term Contracts (STCs)** – During emergencies, the State's STCs should always be your first resource when sourcing requirements. See the memorandum issued by Division Director Delbert Singleton at this link: [https://procurement.sc.gov/files/webfiles/COVID-19%20Guidance%20and%20State%20Term%20Contract%20Information%20\(002\).pdf](https://procurement.sc.gov/files/webfiles/COVID-19%20Guidance%20and%20State%20Term%20Contract%20Information%20(002).pdf)

**MAY UPDATE** -- Medical supply vendors continue to be critically short of certain types of medical supplies and are allocating what resources they have based on the restrictions previously described. Meaning, if you are a regular user of that contract and are a medical type facility, your orders are given priority over other orders, including backorders. Be sure to take advantage of that opportunity if it is available to you.

**Medical Supplies** – Everyone is critically short for certain types of medical supplies and distributors are allocating those supplies based on different factors. Read the memorandum issued by Division Director Delbert Singleton at this link: <https://procurement.sc.gov/files/webfiles/COVID-19%20Guidance%20and%20Contract%20Information.docx>

**Proper Use of the Temporary Personnel Services Contract** – As a reminder, positions available under the STC for temporary personnel services are limited to the specific positions listed on the contract, and then only to supplement your existing personnel on a TEMPORARY basis. Be careful not to assume you are within the terms of the contract if you start looking at creative solutions. For example, you can supplement your agency-hired (not contracted) janitorial personnel during this time if you need cleaning more often than it is already being performed. However, you cannot hire a new “company” to provide highly specialized sanitation services under this contract because that is a new and different service.

The positions on this contract are intentionally generic. If you have a highly specialized personnel requirement, you must source that separately in accordance with the Code or your agency's human resources policies.

See additional information on the Temporary Personnel Services Contracts in the section *Newly Awarded State Term Contracts (STCs)*.

#### **IT Updates**

While South Carolina is in a State of Emergency under Executive Order 2020-15 and any subsequent extensions due to the COVID-19 pandemic, we're suspending all activity related to the Master Information Technology Manufacturer Agreement Program (MITMAP) (5400018752) and the Statewide Term Information Technology Reseller Master Contract (STIR Master) (5400018751) procurements. This allows us to focus on our emergency response role and responsibilities. As a result, the Request for Information response deadlines are extended until further notice.

**Microsoft Software Contract** (4400017751) — In order to ensure we best serve you, please help by completing a quick survey on the Statewide Microsoft Software Contract here: <https://www.surveymonkey.com/r/M85NX9F>. Please forward to any significant users impacted by this Contract within your organization. *End users of the products need **not** complete the survey.* Only those that are impacted in some way other than the end use of the products acquired (e.g. those responsible for making information technology or security related decisions, budgeting, purchasing). The survey will close on **June 5, 2020** so please take five minutes to provide your feedback as soon as possible.

Please see **Currently Advertised Cooperative Contracts** for updates and information requests on Copy and Print Output Device Programs and Data Communications Products & Services NAPSO Contracts.

**Market Research and Agency Input Requests for NEW State Term Contracts (STC)** — *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.

The Office of State Procurement is making every effort to put relevant contracts in place to meet agency needs related to COVID-19. As such, we have published a solicitation for Electrostatic Disinfection Services. See the *Currently Published Solicitations* section for additional information. We are also developing a solicitation for **cloth masks** that we intend to publish as quickly as possible.

If there are other potential contracts that your entity needs, feel free to reach out and let us know. We ask that you provide us with as much information as possible to assist in market research efforts. The following information is most helpful:

Anticipated Users and their contact information in case we need additional information or assistance with specification development

Anticipated Volume

dollars

and quantity

Continued Need Beyond Initial Purchase

Market Stability

Level of Competition (who are the known suppliers of the good/service)

**Self-Funded Web Portal** – The current contract 4400008796 resulting from solicitation 5400007500 expires July 15, 2021. OSP will be publishing an RFP for subject solicitation in July/August. If you have any questions or concerns, please contact Randy Barr, Sr. at [rbarr@mmo.sc.gov](mailto:rbarr@mmo.sc.gov) or 803-896-5232.

**Dell QuestOne Privilege User and Identity Software and Hardware (5400007574)** -- The current contract 440008297 is extended for six months and the new expiration date is November 29, 2020. The OSP plans to publish a RFP in the month of June. If you have any questions or concerns, please contact Randy Barr, Sr. immediately at [rbarr@mmo.sc.gov](mailto:rbarr@mmo.sc.gov) or 803-896-5232.

**Microsoft Software Contract (4400017751)** -- In order to ensure we best serve you, please help us by completing a quick survey by **June 5, 2020** on the Statewide Microsoft Software Contract here: <https://www.surveymonkey.com/r/M85NX9F>.

**SAP SuccessFactors LMS Statewide (540009365)** -- The current contract 4400010768 is extended for six months and the new expiration date is December 28, 2020. The OSP plans to publish a RFP in June. If you have any input, questions or concerns please contact Kristen Hutto immediately at [khutto@mmo.sc.gov](mailto:khutto@mmo.sc.gov) or (803) 737 – 7685.

**Westlaw Legal Research** — The current contract 4400011669 is set to expire December 31, 2020. The OSP plans to have a replacement contract in place prior to this new expiration date. If you have any input, questions, or concerns please contact Kristen Hutto at [khutto@mmo.sc.gov](mailto:khutto@mmo.sc.gov).

### **Market Research and Agency Input Requests for existing State Term Contracts:**

**Household Appliances** – Kelly Cobian ([kcobian@mmo.sc.gov](mailto:kcobian@mmo.sc.gov)) is working on a new household appliance contract. If you have any ideas for improvements to the current one, please have it to Kelly no later than **June 15, 2020**. Are there additional products you would like to see added? Now is the time to let us know so we can best meet your needs.

**Trash Can Liners (High/Low Density)** – Kelly Cobian ([kcobian@mmo.sc.gov](mailto:kcobian@mmo.sc.gov)) is just beginning the research into the next iter-



*Division of Procurement Services' Kathy Santandreu on duty at SCEMD's Emergency Operations Center. DPS procurement professionals maintain a round-the-clock presence supporting the emergency response by sourcing supplies and services as needs arise.*



ation of these contracts which expire March 2, 2021. Please contact her with input (good or bad) to share your experiences with the current contract.

**Backhoes/Loaders & Motor Graders** – The current contracts expire on February 20, 2021 so now is the time to provide input into the next version. Do we need to update the specifications? Is there new equipment that should be on the new contract that currently doesn't appear? Has newer technology made some of the equipment obsolete? Only you can answer these questions and we need your input. Contact Ellicia Thompson ([ethompson@mmo.sc.gov](mailto:ethompson@mmo.sc.gov)) as soon as possible with any information you have.

**Light Bars – Law Enforcement** – DeAna Reed Sharpe, [drsharp@mimo.sc.gov](mailto:drsharp@mimo.sc.gov)) is beginning her research into the next iteration of these contracts. Please contact her ASAP with suggestions/recommendations/improvements which can be applied to the current contracts. Are there products that need to be added, removed, or replaced?

### **State Term Contracts that will NOT be renewed or resolicited**

Nothing new to report.

### **Currently Published Solicitations**

**Electrostatic Disinfection Services (5400019840)** – Ellicia Thompson ([ethompson@mimo.sc.gov](mailto:ethompson@mimo.sc.gov)) held the pre-bid conference for this solicitation on May 12 and we had about thirty vendors on the conference call. Amendment #1 was published on May 15 and the bid opening was held on May 26.

You can read the solicitation at [this link](#), but here are the basics.

It is a FPB to establish tiered pricing based on the square foot of a facility. In addition to facility disinfection, the contract will include specific pricing for the electrostatic disinfection of vehicles, busses and controlled access detention spaces.

This will be a non-mandatory STC and it does NOT include any janitorial services, or disinfection/sanitization services when an employee has been diagnosed with the virus. Those services should be available with your contracted janitorial services provider; if not you'll need to procure those specific services outside of this contract in accordance with the SC Consolidated Procurement Code.

**Large Tractors and Mowers(5400019565)** – DeAna Reed-Sharpe([drsharp@mimo.sc.gov](mailto:drsharp@mimo.sc.gov)) issued Amendment #1 to this solicitation on May 13 with an anticipated award date of June 16, 2020, contracts beginning on September 7, 2020. In the amendment we added a category for tractors between 225.1 and 340 PTO horsepower. Previous versions of this contract limited the maximum HP to 225.

A copy of the solicitation and amendment may be found here. <http://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400019565>

**Biometric RFP (5400019140)** – The current solicitation is in the evaluation phase and we anticipate awarding after panel review in June/July 2020. If you have any questions or concerns please contact Randy Barr, Sr. at [rbarr@mimo.sc.gov](mailto:rbarr@mimo.sc.gov) or (803) 896 – 5232.

**Records Conversion – Paper to Digital (540008164)** – These contracts are extended to a maximum expiration date of October 12, 2020. OSP published a new solicitation (5400019274) that will open in June. We anticipate awarding in July. If you have any questions or concerns, please contact Will Butler at [wbutler@mimo.sc.gov](mailto:wbutler@mimo.sc.gov) or 803-737-9854.

**Telematics (After Market Fleet Monitoring) (5400018151)** – The RFP to establish a STC for Telematics is currently in the evaluation phase with an anticipated award in June. If you have any questions or concerns, please contact Will Butler at [wbutler@mimo.sc.gov](mailto:wbutler@mimo.sc.gov) or (803) 737-9854.

### **Newly Awarded State Term Contracts (STC)**

**Temporary Personnel Services (5400018632)** – Kelly Cobian ([kcobian@mimo.sc.gov](mailto:kcobian@mimo.sc.gov)) published the initial awards for these

contracts on May 8, 2020 and they became effective on May 20. The new contracts will begin on **June 15, 2020** so users have time to establish new POs before the end of the fiscal year. There will be a 15-day overlap between the old and new contracts.

Due to the current pandemic conditions, the first round of subsequent awards will be posted on or about June 3, 2020, with a contract start date of June 15, 2020.

**Oracle Software & Support** — Contract [4400023890](#) has been awarded to Mythics, Inc under Solicitation 5400018160 for Oracle Software & Support. The scope of this contract is limited to on-premise software and support currently installed in those entities listed on the solicitation's Eligible UGU List in Section III. Contact Kristen Hutto at [khutto@mmo.sc.gov](mailto:khutto@mmo.sc.gov) if your entity is not listed and has an installed base of Oracle on-premise software products it needs to keep supported.

**Juniper Networks** — Contract 4400023908 has been awarded to Juniper Networks, Inc., under Solicitation 5400019515 and will be effective June 1, 2020 – May 31, 2025. If you have any questions or concerns, please contact Randy Barr, Sr. at [rbarr@mmo.sc.gov](mailto:rbarr@mmo.sc.gov) or 803-896-5232.

### **Currently Advertised Cooperative Contracts**

**Copier/Output Device NASPO Contracts** — (Nevada as Lead State to Agreement #3091) These contracts have been extended up to June 30, 2020. Participating Addendum for new NASPO Contracts awarded by Colorado as Lead State on NP-18-01 are to be negotiated and awarded prior to that expiration date. Questions may be directed to Carol Norfleet, [cnorfleet@mmo.sc.gov](mailto:cnorfleet@mmo.sc.gov), 803-737-3224.

**Copy and Print Output Device Program** – Review is underway on a Statewide Request for Proposals for a comprehensive copy and print output device program contract that will bring acquisition of copy, print, scan, and duplication devices and equipment, as well as managed print and cost per copy agreements, under one statewide term contract. The goal is for streamlining the processes, customer convenience and cost savings. A customer survey was distributed for UGU input on May 6. We've had robust response and we thank all of you who've participated thus far. If you did not receive a notice about the survey, or just have not had time to respond, you may submit a response to the survey through the end of May at the following link: <https://www.surveymonkey.com/r/B5F22F6>. Questions may be directed to Carol Norfleet, [cnorfleet@mmo.sc.gov](mailto:cnorfleet@mmo.sc.gov), 803-737-3224.

**Data Communications Products & Services NASPO Contracts** — (Utah as Lead State to Agreement #JP14001) – Contracts under this Agreement will expire May 31, 2020 and a new RFP was issued by Utah under Agreement SK18001. The NASPO contract with Extreme Network is extended from May 31, 2020 through October 28, 2020 and the State will publish a solicitation for ongoing use. **The State intends to position other new contracts according to the needs of end users. Please provide information and feedback on products you continue to utilize, or plan to utilize in the future, from the vendors awarded contracts.** These contracts can be reviewed at <https://www.naspo.valuepoint.org/portfolio/data-communications-2019-2026/>. Questions may be directed to Carol Norfleet, [cnorfleet@mmo.sc.gov](mailto:cnorfleet@mmo.sc.gov), 803-737-3224.



## **Ford's Fleet Packing Heat**

How Ford's Latest Tech Helps Police Vehicles Neutralize COVID-19



Ford has designed a new heated software enhancement to pilot with its Police Interceptor Utility – one that law enforcement agencies across the country can utilize to help reduce the footprint of the COVID-19 virus.

CLICK [HERE](#) FOR MORE