

Nuts and Bolts of STCs: Understanding and Using the 10% Rule

Recently we have received several inquiries on how to use the “10% Rule” in the State Term Contracts (STCs). This article is meant to ensure that all our STC users have the same information and understanding on the function and use of this particular clause.

What is the “10% Rule?”

What we commonly refer to as the “10% Rule” is actually compendium clause 7B227-1, “Statewide Term Contract – Acceptance of Offers 10% Below Price (NOV 2012).” This clause states:

Pursuant to Section 11-35-310(35), the state may purchase items available on this contract from a third party (an “alternate vendor”) if the alternate vendor offers a price that is at least ten percent less than the price established by this contract and, after being offered an opportunity, you decline to meet the alternate vendor’s price. With regard to the items acquired, the alternate vendor must agree to be bound by all the terms and conditions of this contract. All acquisition pursuant to this clause must be documented by the procurement officer using the attached form.

Section 11-35-310(35) (with the passage of 2019 ACT 41, now 11-35-310(37)) is the Code’s definition of “term contract,” and is where the Code defines the actual substance of the process. 11-35-310(37) reads, in part (emphasis added):

*As provided in the solicitation, if a governmental body is offered **the same supplies, services, or information technology** at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price **after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price.** If the vendor holding the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. **All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit.***

Let’s examine each of the highlighted statements above one at a time to see how the process works.

First, the lower vendor (not holding the contract) must offer “the same supplies, services, or information technology” that are on the STC for at least 10% below the contracted price. “The same” means the EXACT same, not similar, not a different brand or model, but the exact same thing on the contract. If the supply or services are NOT identical, you don’t have an apples-to-apples comparison and you cannot purchase from the lower vendor. Remember, this is not an offer evaluation for *responsiveness* to the solicitation specification, meaning if the lower vendor’s product meets the specifications of the solicitation and the vendor meets all other requirements, you can award, this is an offer for the identical item already on contract.

Second, you MUST offer the contracted vendors, ALL OF THEM, the opportunity to meet the lower vendor’s price. If there is more than one vendor on contract for that item, you must give each of them the opportunity, or at least as many as it takes for one to meet the lower vendor’s price. You cannot just afford one of the contracted vendors the opportunity. You must afford **all** of them an opportunity before you can decide to enact the 10% Rule.

If one of the contracted vendors meets the lower price you must buy it from that vendor.

Third, the lower vendor must complete the form attached to the solicitation agreeing to ALL the contract terms and conditions, just as they would have done if they had responded to the original solicitation. We have already negotiated items such as shipping, delivery, installation, warranties and warranty repairs, statewide coverage, insurance, liability, and length of performance to name a few. The vendors responding to the solicitation took all those factors into consideration when providing us with their price, so it is imperative that a non-contracted vendor offering a lower price consider them as well. This is the biggest hurdle in using this clause. It is easy for one vendor to give us a price for one sale, but when they consider all the other factors of the contract, it may be difficult to maintain that price.

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Finally, you must document your decision to use the 10% Rule - the purchase will be audited. Use of the form attached to the solicitation and document everything throughout the entire process, especially the refusal of the contracted vendors to meet the lower price.

Applying the Rule

Let's say the lower vendor has met all of the conditions above, none of our contracted vendors agreed to provide the product at the lower price, the lower vendor has signed the form and agreed to all of the terms and conditions of the contract, and you have completed the written determination and awarded the purchase to the lower vendor.

What happens when you need to buy the same thing in the future? Can you just go back to the same lower vendor and issue a new PO under the original form? No, you cannot. Each purchase under the 10% Rule is for a SINGLE PURCHASE ORDER ONLY. The lower vendor does NOT have a STC or any other contract. Should you need to purchase additional items off the same contract, you must go through the entire process again, each and every time.

How to Calculate the "10%"

On fixed price contracts, determining a 10% reduction is typically easy. The contract price for the widget is \$10.00, the lower vendor is offering it for \$9.00, it is 10% lower. But when you get into contracts with multiple adds and deducts (options), items that are established via a market basket, or for complex services, determining what the actual 10% lower rate is can be more complicated.

Typically, in those situations you would do a line-by-line comparison of the product options or services to ensure each element is at least 10% less than the contracted item or service. For example, office supplies are based off a specific market basket used during the solicitation. When comparing prices for an office supply order, you would need to do a line-by-line price comparison for each item, and they must all individually be at least 10% less. Just using a total price of 10% less is not a true price comparison.

On contracts with multiple options where you have a base price for the item and individual prices for the options, you'll want to perform the same process and look at a line-by-line comparison. Not every vendor has the same price relationship with the manufacturer, so their markups will be different based on the type of relationship they have.

The situation is going to dictate what method you use to determine the lower price. Just remember to document everything throughout the process that will support the decision to use the 10% Rule.

Use of the Rule is Rare

Typically, use of the 10% Rule is rare, as it should be. We have seen many instances of a vendor that offered a lower price to an agency but then withdrew that offer after reading the contract. In many other instances, vendors offered a different item at the lower price that did not meet the terms of the contract. Remember, when looking to use the 10% Rule it MUST be a truly apples-to-apples comparison for the EXACT SAME product or service. A comparable, or equal, product or service is not acceptable.

Finally, if you think you have a potential candidate for the 10% Rule and have questions, call the Procurement Manager assigned to the contract. Not only can we offer advice to aid you, we also want to know what is happening in that industry so we can research it and apply it to future contracts and, possibly, the current contract. Multiple good faith attempts at using the 10% Rule on the same contract may, provide justification to re-negotiate with the contracted vendor or, in rare cases, resolicit the contract to get better pricing. Working together helps to improve results for everyone so we always appreciate your feedback.





Statewide Contract News

Be sure to take advantage of opportunities to provide feedback on existing or potential contracts. Market Research and Agency Input Requests are crucial to the formation of our contracts. Our goal is to establish contracts that are effective and efficient in meeting your entity's needs. The only way we can do that is through open communication and feedback. How can we serve you best?

If there is a contract that you would like to hear more information about, let us know. We can feature it as a highlight article in future *DisPatches*.

SAVE THE DATE

The State Fiscal Accountability Authority, Division of Procurement Services, Office of State Procurement is exploring a new approach to contracting for commoditized hardware, software, SaaS, and related implementation services through the establishment of the South Carolina Master IT Manufacturer Agreement Program coupled with strategic Eligible Statewide Term Reseller contracts. Please see the Statewide Master IT Contract approach overview below.

We are holding a feedback conference in December to further explain the approach, answer questions and gather information from our customers. Participation in the feedback conference is strongly encouraged for employees in Procurement and IT. Registration is required to attend in-person or via web conference. **Registration closes December 11th at 3:00 pm.** There will not be any on-site registration on the day of the feedback conference.

**Agency Feedback Session,
December 12, 2019 at 2:30 pm**
Peoples Auditorium (3rd Floor of Sims Building)
2600 Bull Street
Columbia, SC 29201

Register Here: [https://
agencyfeedbacksession.eventbrite.com](https://agencyfeedbacksession.eventbrite.com)

Documents will be published prior to the feedback conference for review. The purpose of these documents is to gather information from the vendor community and end users. The South Carolina Master IT Manufacturer Agreement Program (MITMAP) Request for Comment (RFC) will be under solicitation number 5400018752. The Statewide Master IT Reseller RFC will be published under solicitation number 5400018751.

STATEWIDE MASTER IT CONTRACT APPROACH OVERVIEW

I. South Carolina Master IT Manufacturer Agreement Program

Pursuant to SC Code of Laws §11-35-510, the State will conduct periodic, non-competitive recruitments to enroll Manufacturers of commercially-available Software, Hardware, Software as a Service, and/or related Implementation Service offerings in the South Carolina Master IT Manufacturer Agreement Program (MITMAP).

Enrollment in the MITMAP does not guarantee that the offerings will be available under a statewide term contract. Furthermore, the MITMAP does not authorize Enrolled Manufacturers to sell their offerings to UGUs directly. Enrolled Manufacturer Offerings must either be appropriately acquired through an Eligible Statewide Term Reseller Contract or be separately procured under an authorized source selection method pursuant to the SC Procurement Code.

To enroll in the MITMAP, Manufacturers must, at minimum:

- Have a publicly available Catalog.

- Have a distribution channel, consisting of two or more partners, that can sell all offerings in Catalog.

- Agree to the South Carolina Statewide Master IT Agreement (MITA)* terms and conditions, without modification.

*The MITA will outline the fundamental terms and conditions applicable to all Enrolled Manufacturer Offerings once acquired under an Eligible Statewide Term Reseller Contract.

II. Statewide Master IT Resellers

The State will issue a Request for Proposals seeking statewide term contracts with both Price-Focused and Value-Focused Resellers of hardware, software, SaaS, and implementation services. Each type of Reseller will be evaluated using slightly different criteria and weights. Ultimately, Price-Focused Resellers will be those with the most breadth and depth of eligible Enrolled Manufacturer relationships with the most competitive baseline pricing. Value-Focused Resellers will still be required to have eligible Enrolled Manufacturer relationships, but the evaluation will focus on their niche experience within specific IT industries and their ability to guide UGUs accordingly. Contracts awarded pursuant to this solicitation will be considered Eligible Statewide Term Reseller 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.

Proofpoint Software - The OSP will be publishing a solicitation for a new STC for Proofpoint software which is an email protection system that provides encryption and threat detection upon approval of our SaaS piggyback. Any questions or concerns please contact Carol Norfleet at cnorfleet@mmo.sc.gov or 803-737-3224.

Varonis Data Security - The OSP has determined based upon market research that a STC will be published upon approval of our SaaS piggyback. **Any questions or concerns please contact** Will Butler at wbutler@mmo.sc.gov or (803) 737-9854.

Type A-2 Buses – In conjunction with the SC Department of Education, we are exploring the opportunity to contract for Type A-2 buses. Operation of these buses would require a commercial driver's license (CDL), but they are smaller than a Type C or D and could potentially provide some flexibility in a bus fleet. Please contact Elicia Thompson (ethompson@mmo.sc.gov) if you are interested in this type of bus or have any questions related to it.

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

Mail Services – Pre – Sort & Barcode -- The OSP will be publishing a STC solicitation for Mail Services in January 2020. If you have any comments or concerns about the way the existing contract is structured, please contact Elicia Thompson at ethompson@mmo.sc.gov or 803-737-0687.

Temporary Personnel Services – Kelly Cobian (kcobian@mmo.sc.gov) is requesting input for the subject contract. The current contract expires in June 2020 and she will be resoliciting in approximately February 2020. Any input (good, bad or indifferent) is appreciated.

Household Appliances – Kelly Cobian (kcobian@mmo.sc.gov) is beginning her research into a

new household appliance contract. We have already had some internal discussions as to some changes to this contract (some additional appliances), however, we would really like to have any recommendations you may have. If you are a current user of this contract, or if you would be if there were additional offerings, please contact Kelly as soon as possible with your comments or questions.

Large Tractors and Mowers – Michael Speakmon (mspeakmon@mmo.sc.gov) is currently working with SCDOT to finalize the specifications for the equipment that will be included in this solicitation, with an anticipated solicitation publication date of February 2020. If you have any questions, comments or input to provide, please contact him as soon as possible.

Vehicle Rental Services – The current contracts expired on November 30, 2020. Michael Speakmon (mspeakmon@mmo.sc.gov) is beginning the business analysis phase of this project and is looking for input on ways to improve the contract. We are considering a nationwide component of this contract for travel outside South Carolina. Is this something you would like to see added to the contract? Are there other issues that you need to have addressed? If so, please contact Michael as soon as possible.

State Term Contracts that will NOT be renewed or resolicited: Nothing new to report.

Currently Published Solicitations:

Carbon Black Consolidated Security (5400018555) – The Carbon Black Security Consolidated Security Solicitation was published on September 27th and opened on November 14th. Any questions or concerns please contact Randy Barr, Sr. at rbarr@mmo.sc.gov or (803) 896-5232.

Remanufactured Toner Cartridges (5400018519) -- The Remanufactured Toner Cartridges contract was published on September 11th. We anticipate posting an award on December 20th. If you have any concerns or comments about the way the existing contract is structured, please contact Will Butler at wbutler@mmo.sc.gov or (803) 737- 9854.

Symantec Product Services (5400018021) -- The IFB for Symantec was published on May 23rd, 2019 and subsequently all responses received were determined non-responsive. A new solicitation will be published after completion of a SaaS Term agreement. Any questions or concerns please contact Kristen Hutto at khutto@mmo.sc.gov.

Telematics (After Market Fleet) (5400018151) – The RFP to establish a STC for Telematics was published on August 15th and opened on November 7th with an anticipated award on December 20th timeframe. Any questions or concerns please contact Will Butler at wbutler@mmo.sc.gov or (803) 737- 9854.

Oracle (5400018160) -- The RFP for Oracle published on September 9th. We anticipate award by January 07, 2020. Any questions or concerns please contact Kristen Hutto at khutto@mmo.sc.gov.

Hardware Maintenance Manager (5400018885) -- The Hardware Maintenance Manager opened on November 22nd and was awarded on December 5th. Contract sheets will be updated upon the contract going live. If you have any concerns or comments about the way the existing contract is structured, please contact Carol Norfleet at cnorfleet@mmo.sc.gov or 803-737-3224. It becomes effective December 22nd.

Type A-1 Buses (5400018792) – This is the contract for the Jacob’s Law buses that are a maximum of 14 passengers and do not require a commercial driver’s license. The anticipated award posting date is December 27, 2019, with a contract start date of February 22, 2020. We do not anticipate a delay in either of these dates.

Mosquito Control Chemicals (5400018451) – No responsive offers were received for this solicitation. We are currently reevaluating the specifications and solicitation format and will publish another solicitation as soon as possible. Until such time as new contracts are awarded, users will need to procure the supplies they need in accordance with the Procurement Code.

Newly Awarded State Term Contracts (STC):

Furniture (5400018520) – DeAna Reed-Sharpe awarded the initial contracts (133 in all) for furniture on November 8, 2019, with a contract start date of December 6, 2019. Note that this contract includes office and educational furniture and there are no longer separate contracts for each. All previous furniture contracts will expire no later than December 17, 2019 and will be replaced by the newly awarded contracts under this solicitation.

We are currently in the process of creating the necessary dealer contracts as identified by each awarded manufacturer. This is a **VERY** time-consuming process in SCEIS and we

are working very diligently to get them complete as quickly as possible.

If, during that time, you need to place an order with a manufacturer/dealer whose contract has not been created yet, please contact DeAna Reed-Sharpe at drsharpe@mmo.sc.gov, and provide her the pertinent information. We’ll work to quickly create that contract so that the order may be processed. Please note this procedure is for immediate need projects only and should not be used as a matter of convenience.

We anticipate all dealer contracts complete early to mid-January 2020.

Constituent Management Services (CMS) now has two contracts versus one as in the past. Contract number 440002647 awarded to Catalyst is for any NEW request for Constituent Management Services. Contract number 4400022933 awarded to Leidos is for any existing Installed Base (IQ). If you have any questions on which contract to use, please contact Randy Barr, Sr. at rbarr@mmo.sc.gov or (803) 896-5232. The contracts effective dates are below:

Constituent Management (4400022647) -- The Constituent Management Solicitation was awarded and effective on October 28th 2019. Effective dates of contract are October 28th, 2019 – October 27th, 2019. Any questions or concerns please contact Randy Barr, Sr. at rbarr@mmo.sc.gov or (803) 896-5232.

Constituent Management (4400022933) -- The Constituent Management Solicitation for Installed Base ONLY was awarded and effective on November 19th 2019. Effective dates of contract are November 19th 2019 0 November 19th 2024. Any questions or concerns please contact Randy Barr, Sr. at rbarr@mmo.sc.gov or (803) 896-5232.

Currently Advertised Cooperative Contracts

No additional advertisements have posted this month.



NASPO NEWS



South Carolina is among twelve states selected to receive internship grants for the summer 2020 program.

The NASPO (National Association of State Procurement Officials) internship program serves as a model to help interested states begin their own internship programs. States participating in this program recruit students from NASPO academic partner institutions across the country. The candidates come from top-tier university Supply Chain programs — the closest field of study to public procurement.

Upon learning of South Carolina's selection, Division of Procurement Services Division Director Delbert Singleton said, "This is a tremendous opportunity not only for the intern who will be selected, but for the procurement profession in South Carolina. Developing a solid, meaningful internship program for up and coming procurement professionals in the State will help ensure a competent core of next generation procurement professionals with academic and practical experience."

Procurement Director Kimber Craig echoes Delbert's enthusiasm, "It's an excellent opportunity for both the agencies and the interns to develop interest in the profession among college students."

More information about NASPO's internship program is available [here](#).



Good news everyone! A **draft 2020 OSE Manual** is available on our website for public comment. It is located at:

<https://procurement.sc.gov/manual?y=2020>.

The *Manual* will be **live for use** on January 2nd, 2020. With the new Manual we will be transitioning to the 2018 Building Codes.



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