



Clarification Regarding the Proposed Procurement Regulation



The Division of Procurement Services has widely publicized its proposed amendment of the Procurement Code Regulations. We believe the proposed procurement regulations both increase efficiencies and achieve the furtherance of the Procurement Code's purposes and policies. Likewise, we believe there will be no increased cost or delay to the State or the business community.

In fact, the proposed amendments will benefit the State by enhancing the integrity of the process, improving efficiency, providing clarity of process, promoting increased communication between the State and the business community, and allowing sound procurement practices that enable government to acquire better value for the taxpayer's dollars. The following is intended to provide clarity regarding the intent and application of the proposed regulatory changes.

Question: *Does the new regulation on Pre-Solicitation Procedures require Procurement Services to interfere with an agency's acquisition planning and market research activities?*

DPS Answer: No. The proposed regulation (R. 19-445.2017) does not require DPS' participation. It does provide DPS an opportunity to partner in the planning and research – but **only** for those procurements for which DPS is directly responsible.

Question: *Won't requiring pre-solicitation planning and research increase the amount of time the procurement process takes?*

DPS Answer: Any significant procurement requires a certain level of planning and research. Acquisition planning

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News from the
Office of the State Engineer

Bid Mistake in Fact vs. Judgement

Part 1

It's 1:47pm in the early afternoon. There is a frenzy of activity around the bid room door as bidders go in and out preparing to turn in their bids for a 2:00pm closing. Joe is sitting in the lobby a little nervous as he has not received a bid number from his electrical sub. His fingers perspire as he sends text after text but still no reply. It's now 1:57pm and Joe decides to put a number into his bid takeoff for the listed electrical sub. Joe calculates his total bid amount, enters it on his bid, seals it up. As he turns in his bid the door closes behind him and a loud voice booms - 2:00pm, bids are closed. Joe fidgets while Billy opens and reads aloud bids one after another. Finally, Billy announces that Joe is the apparent low bidder and the results will be posted soon. On the way back to the office Joe calls to announce the winning of the project. After the congratulations, the administrative assistant tells Joe he had a message from the electrical sub with his bid number. Joe, back in the office, begins to get nervous again as he realizes the electrical number that he put in the bid is \$200,000.00 lower than the electrical sub's bid number. It is now 3:12pm and Joe realizes that he has made a substantial mistake. Joe calls Billy to notify him of the mistake and ask to withdraw his bid explaining the nature of the mistake. What are the factors that Billy should consider in reviewing this request?

In competitive sealed bidding, there are generally two types of mistake that may result in a request for bid withdrawal: 1) a bidder's mistake in **judgement** and 2) a bidder's mistake of **fact**.

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The State Term Contracting Team for Information Technology is looking at establishing **Advisory Groups** for the following future state term contracts:

Cloud Services for IaaS and PaaS

IT Professional Services

Please let Kristen Hutto know if your agency would like to participate at khutto@mmo.sc.gov.

Smallwares. We are looking at establishing a new STC for kitchen ware and utensils used in school kitchens. This is primarily intended for school districts but will be open to everyone for use. Data to this point indicates this is a strong candidate for a state term contract. As such, Kelly is currently preparing the solicitation document and a solicitation schedule. It is our intent to have contract(s) awarded before July 2019. Please express your interest in this product and provide any information, questions or concerns to Kelly Cobian (kcobian@mmo.sc.gov) as quickly as possible.

Pass Thru Ovens. This is another opportunity for a new STC primarily for school districts, but will be open to everyone to purchase. Please express your interest in this product and provide any information, questions or concerns to Kelly Cobian (kcobian@mmo.sc.gov). Kelly is preparing a solicitation schedule as we finalize the specifications for the ovens. Our intent is to have contracts in place in time for customers to use prior to the next school year.

Travel Management Services – The State has negotiated a Participating Addendum (PA) for the NASPO Travel Management Services contract and the new contract (4400020879) has been awarded. The purpose of this contract is to permit users to make airline, hotel and rental car arrangements through one contractor. The scope of the contract does not include an all-inclusive

travel management program, just the use of the contractor for travel services. This is a non-mandatory contract.

We are working with the vendor to provide detailed instructions concerning establishing an account and using the contract, as this will be a little different than our customers are used to. All information will be provided as soon as possible on the State's website. Until then, questions may be directed to Michael Speakmon mspeakmon@mmo.sc.gov.

Duo – We have received several inquiries, feedback and input to establish a new STC for Security Software called Duo for Higher Ed's. Thank you for your time, efforts and valuable input. The OSP plans to publish a solicitation in the month of May 2019 with and award date in the month of July 2019. Please contact Randy Barr, Sr., rbarr@mmo.sc.gov or 803-896-5232 if you any questions or concerns.

Mobile Device Protection – The OSP will be publishing a new STC for Mobile Device Protection in the month of April in response to Proviso 117.148. Mobile device protection would provide for protecting mobile devices, including but not limited to, cellular phones, tablets, laptops and chrome books. If you have input or questions please contact the Procurement Manager, Randy Barr, Sr., at rbarr@mmo.sc.gov or 803-896-5232.

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.

Interagency Mail Services (IMS) (Courier Services) –

A Request for Information (RFI), 5400017527, was issued on 3/13/19 to request input from the vendor community. Responses are due to the Michael Speakmon (mspeakmon@mmo.sc.gov) no later than 4/04/19. We will evaluate the responses and provide further information as it develops.

Mass Notification Services – The OSP is currently conducting market research to determine if there is enough need to establish a new State Term Contract for Mass Notification Software. Please let us know if you are currently utilizing this type of service/software, and if so, who your provider is, cost, functionality and etc. If you are not currently a user, are you interested in such a

product/service? What functionality would you require? Please submit your information, concerns or questions to Randy Barr, Sr., at rbarr@mmo.sc.gov or 803-896-5232. Market research is being conducted for sixty days. A decision regarding whether the State will pursue a State Term Contract for this service will be published in the April *DisPatches*.

Ruckus Wireless - The OSP will be publishing a solicitation for Ruckus Wireless in the month of May with plans to be awarded in July 2019. Any questions or concerns please contact Randy Barr, Sr., at rbarr@mmo.sc.gov

Proofpoint Software - We are looking at establishing a new STC for Proofpoint software which is an email protection system that provides encryption and threat detection. Please express your interest in this product and provide any information, questions or concerns to Carol Norfleet at cnorfleet@mmo.sc.gov or 803-737-3224. A decision regarding whether the State will pursue a State Term Contract for this service will be published in the April *DisPatches*.

Athletic team transportation. We were looking at establishing a new STC for transportation of sports teams from higher education institutions to games at other locations. It is our belief that agencies may be able to have these services provided through the new Travel Services contract. We ask that each agency explore this possibility once the contract is effective and provide feedback to our office for further consideration. If you have input or questions please contact the Michael Speakmon at mspeakmon@mmo.sc.gov

School Textbook Recycling. We were looking at establishing a new STC for disposal of school textbooks once all other avenues to sell, transfer or recycle old textbooks have been exhausted. We have tabled this requirement until such time as sufficient information from our customers is available. To date, none of the entities requesting this service have been able to clearly define what the expectation is from an awarded contract. Anyone have input may contact Elsie Montgomery (emontgomery@ed.sc.gov) at SCDE that she will compile with other information received.

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

Written Document Translation and Telephonic Interpretation Services - Current Contract expires 10/31/2019. Market research is being conducted to ensure that the existing contracts are meeting agency needs and to identify possible improvements. **Please share all information or concerns you may have by May 1st**, so that an informed decision can be made on how to structure the future contracts. If you have input or questions please contact the Procurement Manager,

Kelly Cobian, at kcobian@mmo.sc.gov or 803-737-5473 with any questions or concerns. Thank you for your help!

Security Products - We are conducting market research on the brand name security products, Symantec, Fortinet and Tenable until 4/10/2019. The OSP plans to publish the solicitation in the beginning of May 2019. Please provide any feedback or input to Kristen Hutto at khutto@mmo.sc.gov or 803-737-7685.

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

Currently Published Solicitations:

Body Cameras/In Car Video - The RFP for Body Camera/In Car Video, SaaS; Video Storage was published on 3/18/2019 with an anticipated award date in early June. Any questions or concerns please contact Randy Barr, Sr., at rbarr@mmo.sc.gov

IBM Security Software - The Solicitation has been published and we anticipate awarding in April 2019. If you have any questions or concerns, please contact Kristen Hutto at khutto@mmo.sc.gov

LogRhythm - The solicitation has been published and we anticipate awarding in April 2019. If you have any questions or concerns please contact DeAna Reed-Sharpe at drsharpe@mmo.sc.gov or 803-896-6389.

Industrial Gases - Current Contract expires 4/30/2019. The new solicitations for Industrial Gas Cylinders and for Bulk Gases have been published with a bid opening date of March 27, 2019. Please express any questions or concerns to Rob Malpass at remalpass@mmo.sc.gov

Cloud Services. - OSP recently published a RFP shared services solicitation, for use by the Division of Technology on behalf of proviso Cabinet agencies. If you have any input regarding the future statewide contract for cloud computing IaaS or PaaS, please contact Kristen Hutto at khutto@mmo.sc.gov or 803-737-7685. **We are also looking at establishing an Advisory Group for a future state term contract for IaaS and PaaS.** Please let us know if your agency would like to participate.

Statewide for US and SC Flags - OSP has published the solicitation for US and SC Flags. In FY2018, the South Carolina General Assembly created the South Carolina State Flag Study Committee. The Committee was charged with proposing an official, uniform design for the state flag based on

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and market research (like talking to vendors) are fundamental steps in the procurement process, necessary to minimize false starts, re-dos, last-minute undertakings, and poor contracts. The majority of the time, this actually leads to a faster process due to risk mitigation. Many agencies already take this necessary step and this would encourage others to follow.

Question: *Won't Procurement Services' inclusion in pre-solicitation planning and research only add an extra layer to the process?*

DPS Answer: First, the proposed regulation only involves DPS in planning for procurements above the using agency's certification. Second, some level of acquisition planning and market research is necessary for any purchase. If DPS is conducting the procurement it, is likely a major acquisition. Finally, and as the regulation recognizes, more planning and research is necessary as procurements grow more complex. We do not expect DPS' conduct of a procurement to increase the amount of research and planning over what would otherwise be required.

Question: *Do the new pre-solicitation procedures provide material for protests?*

DPS Answer: No. To the contrary, Section (A)(1) of the regulation provides in part, "[n]othing in section A, B, or C of this regulation shall provide an independent basis for administrative review pursuant to Article 17."

Question: *Does the new regulation on pre-solicitation procedures place control over planning or research in the hands of a Procurement Services employee?*

DPS Response: The regulation does not grant new authority. Rather, it places primary responsibility for acquisition planning and market research on the using agency and only involves DPS in acquisitions the Division conducts.

Question: *Regulation section 19-445.2015 seems to place a great deal of unilateral authority in the hands of a single person, the CPO, to determine the presence of an illegality and what remedy should be imposed. The CPO could exercise such authority regardless of the lack of subject matter expertise or practical knowledge and without an understanding of the consequences of terminating a contract that is otherwise beneficial to and in the best interests of the State.*

DPS Answer: The procurement regulations have addressed this topic for decades. The proposed revisions actually delegate more authority to the agencies than they have under the current regulations. We rewrote the regulation to provide clearer instructions on what options are available when an **unauthorized** or otherwise **illegal** contract is identified.

Question: *Does the new regulation on price reasonableness give Procurement Services the ability to unilaterally determine what price is appropriate and then disqualify an offeror based on that determination in the hands of a Procurement Services employee who may lack the subject matter expertise or practical knowledge?*

DPS Answer: For all procurements, the **applicable** procurement officer, whether an employee of the agency or of Procurement Services, bears responsibility for determining that the final contract price is fair and reasonable. This obligation and authority are already reflected in the current law. The new proposed regulation is intended to establish criteria and analytical methods for determining price reasonableness.

We hope this helps clarify the impact of these changes to the Regulations. If not, please read them. The proposed regulations may be reviewed in at least three different places online:

Information published in the "Green Agenda" for the October 23, 2018 State Fiscal Accountability Authority (SFAA) Meeting (https://www.sfaa.sc.gov/files/mtgs/1023SFAA_Meeting_Agenda.pdf, Green Agenda Item 3, page 267 – 287 of the PDF document)

Volume 42, Issue 11, page 30 of the November 23, 2018, *South Carolina State Register* (See link for 2018-2019 Index for State Register Volume 42, November 23, https://www.scstatehouse.gov/state_register.php)

Procurement Services website (<https://procurement.sc.gov/review-period-draft>)





In March of 2018, **South Carolina Business Opportunities** migrated from its long-standing format as a daily DPS document posting only new solicitations to a living database of *all* open, ongoing solicitations across multiple agencies and organizations. Now with its own domain, scbo.sc.gov is a *heavily* trafficked site which better serves BOTH of SCBO's intended audiences: the agencies who advertise and the vendor community who depends on it for their livelihoods. We thank all of you who have made the new SCBO a roaring success.



(Statewide Contract News Continued from Page 3)

historically accurate details and legislative adoptions. The South Carolina Legislature has not yet adopted this proposed design as the official South Carolina State Flag but may do so during the term of this contract. If an official design is adopted by the Legislature, any necessary design specifications will be modified via a mutually agreed upon change order. In the event a mutually agreed upon change order cannot be reached, the State reserves the right to cancel, in whole or in part, all contracts awarded as a result of this solicitation, and to resolicit for the State's requirements. The State will not be responsible for any existing South Carolina flag inventory for any contractor at the time the new specifications are enacted. Bid opening for this solicitation (5400017282) was 3/26/19, with an estimated award posting on 4/11/19.

Learning Content Management Systems – Currently in negotiations. CPO approval was granted to extend existing contracts for six months or until new contracts are awarded, whichever comes first. Necessary change orders have been executed and the website and SCEIS have been updated to reflect the same. Additional questions or concerns can be addressed by reaching out to Kristen Hutto at khutto@mno.sc.gov or 803-737-7685.

School Buses – Michael Speakmon (mspeakmon@mno.sc.gov) published the solicitation for the statewide contract for school buses. Bid opening is scheduled for April 09, 2019, with an estimated award posting on April 23, 2019. All dates are subject to change.

Newly Awarded: Safenet Two – Factor - The Safenet Two-Factor contract has been awarded with an effective date of 3/16/2019. Any questions or concerns please contact Will Butler at wbutler@mno.sc.gov 803-737-9854.



Save
these
Dates...

- ◆ Procurement Director's Conference - Tuesday, April 30th at the State Farmers' Market. Visit our [training page](#) for more info and to register.
- ◆ SCAGPO Summer Training May 9. The Division of Procurement Services in collaboration with SCAGPO will offer its course on the Freedom of Information Act and how it applies to procurement. Stay in compliance with the LAW! Space is limited. Visit [SCAGPO's website](#) for more information.
- ◆ The Office of State Engineer will be hosting its State Facility Directors Conference at Hickory Knob State Park on October 16-18, 2019. The State Facilities Directors Conference has always been a great opportunity for the facility directors of State Government agencies to share information with one another and with the Office of State Engineer. We tailor the topics presented to the "real world" questions and concerns that occur at the state agency level. As you plan your attendance, please share with Margaret Jordan (803-737-0773) or Phil Gerald (803-737-3222) the topics that you would like to have presented at the conference. October is a busy month at Hickory Knob, so call them and get your reservations in early. (Note: This conference is limited to employees of SC State Government agencies only.)



(Bid Mistake: Fact or Judgement — Part 1 Continued from Page 1)

A mistake in **judgement** exists when a bidder is mistaken about what action should be taken based upon 1) existing facts, or 2) predicted future facts. Bruner & O'Connor on Construction Law, §2:120.

A mistake of **fact** results from such things as unintentional arithmetic errors, typographical errors, transposition errors, decimal misplacement, or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid. Bruner & O'Connor on Construction Law, §2:119

A bidder's mistake in judgement is not generally excusable and does not support a request for bid withdrawal; however, a mistake of fact is excusable. *Ibid*, §2:119 and §2:119.

What kind of mistake did Joe make? If you would like to venture a response, you can submit your answer anonymously at the this [Survey Monkey link](#).

In the next issue of *DisPatches* we consider the answer to this question and other aspects of bid mistakes.



Procurement Services Division Resources & Forms Online (click on any topic below)

- Certification Limits for Certified Agencies, Colleges & Universities
- Procurement Forms
- Procurement Card
- Procurement Preferences
- Solutions-Based Procurement
- Reporting
- Green Purchasing
- American Reinvestment and Recovery Act
- Agency Certification



Wanted:

Talented and dedicated people to join the State Fiscal Accountability Authority's team.

The following positions are currently available within our Agency. Click any listing below for more information:

Acct/Fiscal Analyst

Attorney

Audits Manager

IT Manager

Procurement Manager

Procurement Manager

Procurement Manager

Systems Engineer

Systems Programmer/Developer



State of South Carolina Governor's Proclamation

WHEREAS, the procurement and materials management professions support and enhance the delivery of goods and services by promoting ethical, efficient, and effective purchasing practices; and

WHEREAS, with an annual combined purchasing power of billions of dollars, purchasing and materials management professionals have a significant impact on economic conditions across the state and throughout the world; and

WHEREAS, the South Carolina Association of Governmental Purchasing Officials, a chapter of the National Institute of Governmental Purchasing, and other professional purchasing associations engage in special efforts during the month of March to inform the public about the importance of the role played by the purchasing profession in business, industry, and government.

NOW, THEREFORE, I, Henry McMaster, Governor of the great State of South Carolina, do hereby proclaim March 2019 as

PUBLIC PURCHASING MONTH

throughout the state and encourage all South Carolinians to recognize the many contributions made by purchasing and materials management professionals to the responsible administration, management, and monitoring of goods and services.



Henry McMaster
HENRY MCMASTER
GOVERNOR
STATE OF SOUTH CAROLINA



It is that time of year, pollen is everywhere signifying spring is in the air, and it is also time to recognize and celebrate procurement! March is nationally recognized as Procurement Month, and the Office of State Procurement (OSP) made sure to participate in the celebration!

In addition to the Governor's proclamation which declared March as Public Purchasing Month, the OSP decided to demonstrate the fun side of contracting through the use of Dr. Seuss. As seen throughout the DPS halls, several Dr. Seuss quotes, illustrations, and decorations were applied to celebrate procurement processes. Some examples included:

Oh the Places You Will Go in Procurement!

Sometimes the questions are complicated and the answers are simple.

Think left and think right and think low and think high. Oh! The Things you can think up if only you try!

Oh the places you will go when you read!

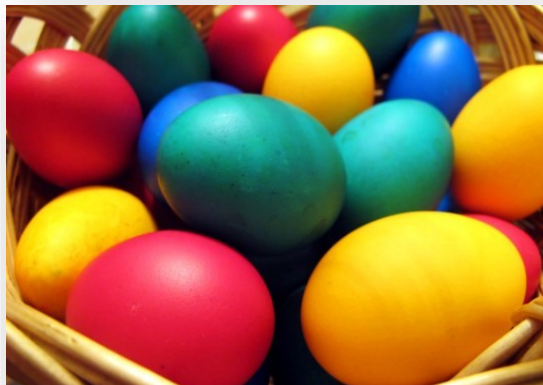
You're off to great places. Today is your day! Your mountain is waiting, so...get on your way!

Purchasing Month is over, but we encourage purchasing pros statewide to celebrate year-round.



The Backpage (employees only)

DPS EGG DESIGN CONTEST



Friday, April 19
Decorators & judges
wanted

Next SFAA Human Resources'
Health Screening:

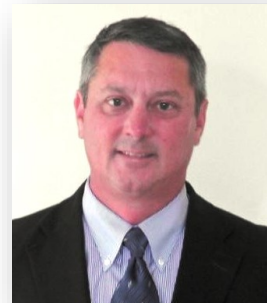
Friday, May 17 7:30am to 1:00 pm

Ste 600 Large Conference Room

More info to follow from HR



The Office of State Engineer has a new Certified Fire Marshal. Congratulations to Mark Lanning, PE for passing the Certified Fire Inspector Test and thus gaining certification with the State Fire Marshal's Office. Mark is the Office of State Engineer representative in Charleston.



Michael Cooper joined DPS on March 18, 2019 as the new OSE Administrative Coordinator. Michael has been working with OSE on a part-time temporary basis since last June, helping to transfer data from the old OSE database to the new one. His work was pretty impressive so they decided to keep him! Michael will now be the day-to-day contact for the Office of State Engineer. Welcome, Michael!



The Congaree Vista Guild is hosting Vista After Five, a free concert series in partnership with Tin Roof and

The Senate. Shows will be outdoors at Tin Roof and The Senate at 1022 Senate Street — one block over from the parking deck.

Vista After Five is free admission. The party begins at 5:30 p.m. and bands take the stage at 6:00. [Click here for the lineup.](#)