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GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE
COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND
MEANS COMMITTEE

OFFICE OF THE EXECUTIVE DIRECTOR

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June 30, 2016

The Honorable Nikki R. Haley, Governor
State of South Carolina
First Floor, State House
Columbia, SC 29201

The Honorable Hugh K. Leatherman, Sr., President Pro Tempore
South Carolina Senate
111 Gressette Building
Columbia, South Carolina 29201

The Honorable James H. Lucas, Speaker
South Carolina House of Representatives
506 Blatt Building
Columbia, SC 29201

Dear Governor Haley, Mr. President and Mr. Speaker:

Part IX, Section 25(B)(2) of the 2014 Restructuring Act requires SFAA to submit a report recommending changes to statutes, policies, and procedures governing state procurement activities. Based on the areas this requirement focuses on, we have divided the report into two parts, a short list of recommended legislative changes and a list of procedural changes, which we have already begun to implement. Please find the required report enclosed.

Sincerely,

Grant Gillespie

Enclosure

Cc: The Honorable Curtis M. Loftis, Jr.
State Treasurer

The Honorable Richard Eckstrom, CPA
Comptroller General

The Honorable W. Brian White, Chairman
House Ways and Means Committee



REPORT ON RECOMMENDED CHANGES TO STATUTES AND PROCEDURES GOVERNING PROCUREMENT ACTIVITIES

Prepared by the
Division of Procurement Services
State Fiscal Accountability Authority

Submitted to:

The Honorable Nikki R. Haley
Governor
State of South Carolina

The Honorable Hugh K. Leatherman, Sr.
President Pro Tempore
South Carolina Senate

The Honorable James H. Lucas
Speaker
South Carolina House of Representatives

Part IX, Section 25(B)(2) of the 2014 Restructuring Act requires the State Fiscal Accountability Authority (SFAA) to “submit a report to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives to recommend changes to statutes, policies, and procedures governing state procurement activities.” Revising procurement rules involves refining the balance between competing policy objectives: integrity, transparency, and best value on one hand; administrative efficiency, speed, and customer service on the other. The Restructuring Act requires that our proposed changes be “formulated to reduce costs, accelerate processing times, and improve services provided to state agencies and their business partners.” Regarding costs, we have focused on reducing both the administrative expenses involved in conducting acquisitions and the costs of the goods and services we acquire. Regarding processing times, we have concentrated on process efficiencies. Concerning improved services, we have committed ourselves on improving communications and processing times. Taken together, our recommendations are designed to achieve those goals without either limiting competition or significantly undermining the systems overall integrity and transparency.

The recommendations set forth herein are only our most recent effort to increase flexibility and better balance the rules governing state procurement. Major statutory reforms were enacted in 1997, 2006, and 2008, each of which was followed by significant revisions to the implementing regulations. As demonstrated by the previous reforms, any substantial change to the state’s acquisition system involves a series of sequential steps: enacting new legislation, promulgating implementing regulations, developing business procedures to execute the laws (e.g., policies, training materials, standard bidding instructions and contract language), and training, all in conjunction with outreach to industry and using agencies.

The Division of Procurement Services (DPS) has engaged in a number of activities to develop the recommendations in this current effort. One such step was hiring a procurement consultant, Ikaso Consulting LLC (Ikaso), to review our business processes and make recommendations for procedural improvements. Ikaso’s review included benchmarking our operations against five other similarly situated states and one-on-one interviews with agency representatives. Additionally, Ikaso conducted a comprehensive survey of our customer agencies, both executive management and procurement staff, to help us better understand areas where we need to improve. Regarding the governing laws, we directly surveyed agency procurement managers for recommended changes to consider. Finally, we collected, discussed, and generated internal recommendations. The recommendations set forth below are the result of these efforts. They are divided into two parts, a short list of recommended legislative changes and a list of procedural changes.

RECOMMENDED CHANGES TO THE PROCUREMENT CODE

1. Increase thresholds for simplified acquisition procedures:
 - a. Increase the “no competition” level from \$2,500 to \$10,000, provided agency documents why price is fair and reasonable (Higher Education is currently at this level.);
 - b. Increase both the threshold for when advertising is required and the cap for using the three-written-quote process from \$10,000 to \$25,000 (non-construction);
 - c. For construction only, increase both the threshold for when advertising is required and the cap for using the three-written-quote process from \$10,000 to \$100,000;¹
 - d. For architectural/engineering services, increase simplified acquisition threshold from \$25,000 to \$50,000 (for higher education only; they already have this limit in the IDC statute); and
 - e. Increase threshold for using simplified-written-solicitation process from \$50,000 to \$100,000; increases all agency base level of authority to \$100,000.
2. Authorize well-established public bidding procedures similar to those allowed in both the Model Procurement Code and other jurisdictions:
 - a. Multi-step sealed bidding process.
 - i. When it is impractical to prepare a purchase description to support award based on price, an invitation is issued for unpriced technical offers, followed by an invitation for bids issued to those offeror’s whose offers have been qualified under the criteria set forth in the first solicitation;
 - b. Best value RFP / “Lowest price, technically acceptable” proposal process.
 - i. Used for service contracts, this process is appropriate when the overall best value is expected to result from selection of the technically acceptable proposal with the lowest overall price. Rather than awarding to the highest ranked offeror, award is made to the vendor providing the lowest price proposal that meets the published non-cost requirements; and
 - c. Competitive negotiations process.
 - i. Appropriate for particularly complex and expensive procurements, this process involves separate negotiations with each offeror within a competitive range, not just the highest ranked offeror. Final evaluation and ranking occurs after those negotiations are complete.

¹ A threshold of \$100,000 was chosen because it matches both the amount above which projects must be approved as a PIP under Title 2, Chapter 47. [Generally, the PIP threshold is \$100,000 for most agencies and \$500,000 or more for higher ed.] Moreover, a threshold of \$100,000 is recommended in comments to the American BAR Association’s Model Procurement Code and is consistent with the upper limits used in a number of other states.

3. Authorize task-order contracting process for construction.
 - a. This process would replace the unwieldy indefinite delivery contract process that has a history in South Carolina of improper use. Task-order contractors are selected on the basis of qualifications. Work is awarded to these contractors in the form of task-orders. Task-orders are awarded to task-order contractors solely on the basis of price competition. Task-order contracting would apply only for task orders valued between \$80,000 and \$350,000. Contracts above that amount would be conducted using existing procedures.
4. Establish guidelines for better market research, pre-solicitation vendor exchanges, requirements definition, risk analysis, and contract administration planning, on large complex procurements.
5. Minimize the delay that protest rules impose on procurements that are not protested.
 - a. The ten-day protest period applies to every procurement above \$100,000 (\$50,000 for construction), adding ten days to the procurement cycle for each of those procurements. By requiring vendors to submit a notice, within three business days after award, of their intent to protest, the ability of vendors to protest is preserved while shortening the minimum possible processing time. No changes to the period of time vendors have to acquire documents and identify their issues of protest.
6. Better enable Higher Education's ability to maximize tax-advantaged funding through contracts with their foundations while maintaining robust requirements for competition in the procurement of construction.
7. Authorize the Chief Procurement Officers to limit access to those portions of solicitation documents that contain highly sensitive information by requiring potential offeror's to sign non-disclosure agreements. Examples of sensitive information include IT data system schematics or prison-system construction drawings.
8. Make communications among state government agencies about contractor performance and anticompetitive practices privileged, i.e., provide some immunity from claims such as conspiracy, libel, and slander.
9. Address unfair competitive advantages, vendor conflicts of interest, and self-dealing by contract workers acting on behalf of an agency by creating appropriate rules.
 - a. A vendor bidding on specifications it was paid to draft is an example of an unfair competitive advantage. A vendor contacting to evaluate its performance under a prior government contract is an example of a conflict of interest.
10. Require advanced public notice of the largest sole source procurements, unless excepted by a chief procurement officer on written determination. For example, Georgia requires sole sources valued from \$25k-\$250K to be posted for 5 business days. Those above 250k must be posted for 15 days.
11. Adjust appeals process.

- a. Modify process of appealing from Procurement Review Panel to better conform to processes applicable to appeals from other administrative bodies. Either provide for appeals to go directly to Court of Appeals, instead of circuit court (which hears virtually no administrative appeals). Alternatively, provide for appeals to circuit court to be governed by Section 1-23-380.

12. Provide for enforcement of un-appealed administrative orders.

- a. The sole means of resolving protests and contract disputes is the long-standing administrative processes governed by the procurement code. By allowing un-appealed final administrative orders to be enrolled as judgments, the law would more clearly allow successful parties to seek enforcement of orders that have not been appealed

13. Prohibit ex parte communications with Procurement Review Panel.

14. Consider recommendations regarding Department of Transportation's (DOT) procurement rules.
(See the Department of Procurement Services' Exemption Audit dated November 3, 2015.)

RECOMMENDED PROCEDURAL CHANGES

The Division of Procurement Services has or is in the process of implementing each of the recommendations set forth below. Many of these are a work in progress which will take time to fully implement.

1. Engage agencies quarterly to identify upcoming procurement, consolidate orders, and better manage the overall state acquisition system.
2. Across state government, collect line item spend detail and conduct spend analysis to develop more effective and efficient future procurements and to enhance negotiating position with vendors.
3. Simplify the protest process by reducing the use of hearings.
4. Implement and monitor performance metrics for Division procurement staff that reflects team performance and customer satisfaction.
5. Log and track solicitation milestones in order to increase engagement with agency staff, improve customer service, and develop more project work plans and performance targets for future procurements.
6. Modify the organization structure:
 - a. Establish a strategic sourcing team;
 - b. Develop a team responsible for enhanced monitoring statewide contracts; and
 - c. Establish a dedicated training manager position to develop curriculum, deliver training, etc.
7. Establish uniform procedures for similar processes across all procurement offices.
8. Modify and improve training program to ensure procurement professionals across the state enterprise are trained and certified on state-specific laws and procedures.
9. Establish objective criteria for determining the source selection method to be used for procurements and incorporate strategic sourcing principles in procurement processes and execution.
10. Standardize and communicate the responsibilities of DPS and agencies for contract monitoring and administration by contract type.
11. Develop a simplified Web-based format for South Carolina Business Opportunities newsletter (SCBO) to enhance usability for vendors and lessen administrative burdens.
12. Implement Construction Project Management System converting the current paper based system to an electronic data system for the transfer of information between agencies and the Office of the State Engineer. This will enable better tracking of projects from initiation to conclusion and collection and retrieval of project data for analysis and reporting purposes.