



South Carolina
Department of Health and Human Services
INDEPENDENT PROCUREMENT AUDIT REPORT
For the Audit Period:
July 1, 2014 to June 30, 2019

Office of Audit & Certification
Division of Procurement Services
February 22, 2021

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INTRODUCTION

We audited the South Carolina Department of Health and Human Services' (DHHS) internal procurement operating policies and procedures, as outlined in their Internal Procurement Operating Procedures Manual, under § 11-35-1230(1) of the South Carolina Consolidated Procurement Code (Code) and Reg. 19-445.2020 of the ensuing regulations.

The primary objective of the audit was to determine whether, in all material respects, the internal controls of DHHS' procurement system were adequate to ensure compliance with the Code and ensuing regulations.

The management of DHHS is responsible for the agency's compliance with the Code. Those responsibilities include the following:

- Identifying the agency's procurement activities and understanding and complying with the Code
- Establishing and maintaining effective controls over procurement activities that provide reasonable assurance that the agency administers its procurement programs in compliance with the Code
- Evaluating and monitoring the agency's compliance with the SC Consolidated Procurement Code
- Taking corrective action when instances of noncompliance are identified, including corrective action on audit findings of this audit

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. Projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Our review and evaluation of the system of internal control over procurement transactions, as well as our overall audit of procurement policies and procedures, was conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

INTRODUCTION

Our audit was also performed to determine if recertification under § 11-35-1210 is warranted.

On September 20, 2016, the State Fiscal Accountability Authority granted DHHS the following procurement certifications:

PROCUREMENT AREAS

CERTIFICATION LIMITS

Service Provider Contracts ¹	*\$3,000,000 per contract per year.
Supplies and Services	*\$ 600,000 per commitment
Information Technology	*\$ 300,000 per commitment
Consultant Services	*\$ 300,000 per commitment

*Total potential purchase commitment whether single year or multi-term contracts are used.

During the audit DHHS did not request an increase in its certification limits.

¹ Provider being a Provider of Services directly to a client. Limit four one-year extension options.

SCOPE

We conducted our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Our audit included testing, on a sample basis, evidence about DHHS' compliance with the Code for the period July 1, 2014 through June 30, 2019, the audit period, and performing other procedures that we considered necessary in the circumstances. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our audit included, but was not limited to, a review of the following:

- (1) Internal procurement and purchasing card (P-Card) procedure manuals
- (2) All available internal and external audit reports pertaining to Procurements
- (3) All sole source and emergency procurement justifications for the audit period. DHHS reported the following sole source procurement activity to DPS during the audit period:

<u>Fiscal Year</u>	<u>Count</u>	<u>\$ Amount</u>
2015	23	10,143,522
2016	17	1,913,491
2017	14	4,319,326
2018	10	3,094,857
2019	19	16,607,512

- (4) Procurement transactions for the audit period as follows:
 - a) Seventy-one payments each exceeding \$2,500
 - b) A block of sequential expenditures over a two-month period reviewed for order splitting or the use of favored vendors
- (5) Small and Minority Business utilization plans and reports. The following activity was reported to the Division of Small and Minority Business Contracting and Certification (SMBCC):

<u>Fiscal Year</u>	<u>\$ Goal</u>	<u>\$ Actual</u>
2015	3,649,747	672,513
2016	3,649,747	761,292
2017	3,827,928	396,082
2018	Unknown	152,475
2019	Unknown	828,681

- (6) Information Technology Procurements under approved IT Plans, and Telecommunication Products and Service purchases under existing Division of Technology Operations (DTO) contracts

SCOPE

(7) Disposition of unauthorized procurements. The following unauthorized procurement activity was reported to the Division of Procurement Services:

<u>Fiscal Year</u>	<u>Count</u>	<u>\$ Amount</u>
2015	1	3,740
2016	3	1,155,429
2017	1	17,953
2018	1	179,140
2019	-	-0-

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We experienced unusual delays in response to requests for documentation or explanation during the audit

Note: The agency’s response(s) to findings have been inserted immediately following the recommendations in the body of the report.

RESULTS OF AUDIT

I. Sole Source and Emergency Procurements

Sole source and emergency procurements made pursuant to § 11-35-1560, and § 11-35-1570, were tested to determine the appropriateness of the procurement actions and the accuracy of the quarterly reports submitted to the chief procurement officers as required by § 11-35-2440. The following exceptions were noted:

A. Required Written Determinations Not Provided or Lacked Authorization

DHHS was unable to provide us with the written determinations for four sole source procurements totaling \$4,279,596, and ten emergency procurements totaling \$53,707,408. Without the written determinations, we were unable to determine the justification for making these procurements without competition.

In addition, two emergency determinations in the amount of \$12,709,528 lacked required signatures.

The result is that 14 of these transactions were illegal and three were unauthorized.

Regulation 19-445.2015 states:

“Upon finding after award that a State employee has made an unauthorized award of a contract or that it is otherwise in violation of law, the appropriate official may ratify or affirm the contract or terminate in accordance with this section.”

Moreover, if the value of the contract exceeds \$100,000, the Chief Procurement Officer (CPO) must concur in the written determination before any action is taken on the decision.

Recommendation: We recommend DHHS develop and implement procedures to ensure that written determinations are prepared and properly authorized for all sole source and emergency procurements prior to issuing a PO as required by the Consolidated Procurement Code.

We further recommend DHHS ratify or terminate any of the 17 contracts still in effect as required by Regulation 19-445.2015.

B. Inadequate Written Determinations for Sole Source and Emergency Procurements

One written sole source determination in the amount of \$268,108 and 17 emergency procurement determinations were inadequate. The sole source determination was dated after the contract start date. The justifications in each of the emergency procurement determinations were that an existing contract expired before a new one could be solicited.

RESULTS OF AUDIT

Regulation 19-445.2110 (B) defines an emergency:

“An emergency condition which creates a threat to public health, welfare, or safety such as may arise **by reason of flood, epidemics, riots, equipment failures, fire loss**, or such other reason as may be proclaimed by either the CPO or the head of a purchasing agency or a designee of either office. The existence of such conditions must create an immediate and serious need for supplies, services, information technology, or construction that cannot be met through normal procurement methods and 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.”

(emphasis supplied)

The SC Supreme Court, relying on the above Regulation and the common meaning of the term emergency, held that “[a]n emergency is, by its very nature, a sudden, unexpected onset of a serious condition.”¹ The expiration of a contract in accordance with its terms is not an event that is sudden and unexpected.

Recommendation: We recommend DHHS develop and implement procedures to ensure that emergency procurements are limited to circumstances that meet the definition of an emergency under Reg. 19-445.2110.² Management should verify that emergency determinations adequately document the existence of an emergency and the need for an emergency procurement.

C. Sole Source and Emergency Procurements Not Reported or Reported Late to MMO

Ten Sole Source procurements totaling \$4,570,384, and seven Emergency procurements totaling \$41,079,669, were not included in quarterly reports to MMO. In addition, eight sole source procurements totaling \$5,478,070, and one emergency procurement in the amount of \$38,848,187, were not reported timely.

Recommendation: We recommend DHHS develop and implement reporting procedures, including management review and approval, to ensure complete, accurate, and timely reporting of sole source and emergency procurements as required by SC Code Ann. § 11-35-2240.

Agency Response

In response to section "A" above, documents were maintained individually by staff and not always maintained in a central retrievable location. The four sole source procurements referenced

¹ The State of South Carolina, In The Supreme Court, Opinion No. 26534, Heard April 15, 2008 – Filed August 25, 2008.

² SC Code Ann. §§ 11-35-1560 and 1570 require adequate public notice for all sole source and emergency procurements greater than \$50,000, effective May 13, 2020.

RESULTS OF AUDIT

have been terminated and ratification is not needed. We concur with the finding regarding the two missing authorized signatures.

This audit has reinforced the need for a comprehensive contract management system to assist in the life cycle tracking and document retention and retrieval of all SCDHHS contracts. Currently, the contract documents are housed in multiple systems and our vision is to combine all agency contracts into one system for tracking milestones, document maintenance/retrieval and reporting. SCDHHS has begun working with a vendor to design this new contract management system. Once implemented, the system will assist us in complying with 11-35-1560, 11-35-1570 and associated regulations.

Additionally, after discussions with the State Procurement Office's (SPO's) Chief Procurement Officer and the Director of Audit & Certification, SCDHHS has a better understanding of the issues with past justifications and a clear understanding of the expectations going forward. We will ensure that SCDHHS' written justifications provide sufficient factual grounds and reasoning for State Procurement and the public to make an informed objective review of our declarations. SCDHHS has already implemented procedures to ensure that written determinations are complete and properly authorized for all sole source and emergency procurements prior to the issuance of a purchase order as required by the SC Consolidated Procurement Code.

In response to "B" referring to inadequate written documentation for one sole source determination, SCDHHS concurs with the finding.

The report also references in section "B" there were 17 emergency procurement determinations were inadequate. Of the 17 emergency procurement determinations referenced in the report, the following have already been terminated and ratification is not needed:

- Magellan (POs dated--10/14/2014, 9/8/2015, 8/29/2016, contract terminated)
- DentaQuest (POs dated--10/21/2014, 9/8/2015, 8/29/2016, 8/09/2017, contract terminated)
- TALX Corporation (POs dated--8/12/2015, 9/8/2016, 12/12/2016, contract terminated)
- Health Management Systems, Inc. (PO dated--9/13/2017, contract terminated)
- BlueCross BlueShield of SC (PO dated--10/9/2014, contract terminated)
- Policy Studies, Inc. (PO dated--8/29/2016, contract terminated)

New competitive contracts have been awarded for the above where applicable. SCDHHS will ratify the three emergency contracts not referenced above.

As a response to "C", the agency acknowledges and accepts these findings. As mentioned above, the agency is working with a vendor to design a new contract management system that will

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assist the agency with timely and accurately reporting of sole source and emergency procurements. We have updated our Procurement Policies and Procedures Manual to include management review of these reports prior to submission to SPO.

II. Information Technology (IT) Procurements

A. IT Plan Approval Threshold Incorrectly Set at \$100,000

DHHS Policies and Procedures incorrectly state that IT Purchases over \$100,000 must have a pre-approved IT Plan by the CIO. We were unable to document DHHS procurement's verification of DTO IT plan approvals at any point during the procurement process. Additionally, there was no yearly IT plan provided for FY 2019; however, a list of Ad Hoc approvals was provided.

Regulation 19-445.2115(B) states “Every governmental body shall develop in coordination with the designated board office a master plan for Information Technology procurements as defined in section 11-35-310 of the Procurement Code. Subject to the approval of the master plan by the designated board office, acquisition of Information Technology by governmental bodies shall be through the Information Technology Management Office.”

Recommendation: We recommend DHHS update its policies and procedures pertaining to approval of information technology procurements, in accordance with 2019-2020 Budget Proviso 117.117 and any successor Proviso passed in subsequent budget years, to require advance IT Plan approval by DTO, of all IT expenditures greater than \$50,000. Those procedures should include management review for completeness.

B. Telecommunication Purchase Procedures

DHHS' procurement manual did not provide a procedure requiring the use of DTO contracted vendors for telecommunication equipment and services.

SC Code Ann. § 1-11-430 requires that all telecommunications equipment and services for the state government enterprise be secured by the Department of Administration under terms it considers suitable and coordinate the supply of the equipment and services for government use.

Recommendation: We recommend DHHS develop and implement policies and procedures to ensure telecommunication equipment and services are procured through DTO contracts as required by SC Code Ann. § 1-11-430.

Agency Response

SCDHHS has updated the Procurement Policies and Procedures Manual. The items listed above have been updated and corrected.

RESULTS OF AUDIT

III. DEVs

We tested 20 DEVs for compliance with the Code and the CG's PO Policy.

A. Improper Use of DEVs

Three expenditures should not have been made without a PO:

- Two were for supplies or services under state term contract but were acquired without a PO. Standard contract terms state that the "Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit."
- One expenditure was made to a non-contract vendor for approximately \$130,000. This vendor was a subcontractor under a contract where no subcontractors were allowed without MMO approval;

Recommendation: We recommend DHHS report the third procurement as unauthorized procurements.

B. Non-Compliance with CG's PO Policy

Three expenditures did not meet the criteria established by the CG's office and should have been ordered with a PO.

Per the CG's PO Policy, direct payments are a payment method only and do not establish compliance with the Code. "Direct Payments should not be used as a matter of convenience as it leads to a reduction in controls and approvals."

C. Non-Compliance with Internal Approval Procedures

Four of the preceding expenditures were not routed to DHHS Procurement for approval before purchasing (via Requisition Form 192).

Recommendation: We recommend DHHS follow the Code pertaining to required competition. We also recommend DHHS develop procedures for the proper approvals for Direct Payments aligned with the CG's PO Policy. Proper approvals include verifying all applicable documentation is attached along with the request for Direct Payment. In addition, we recommend unauthorized procurements be reported to MMO, as required, and include a written determination as to the facts and circumstances surrounding the act, what corrective action is being taken to prevent recurrence, and any individual remedial action.

Agency Response

In response to "A" above, SCDHHS concurs that one expenditure was made to a non-contract vendor and will report this as an unauthorized procurement. We also concur with the finding that

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the two supply/services transactions should have occurred with a PO. We have revised our Procurement Policies and Procedures Manual and adjusted our training program. We will incorporate controls in our new contract management system that will prevent this from occurring in the future.

In response to "B" above, SCDHHS concurs with the finding and has made adjustments to its fiscal policies and procedures to prevent future violations of the CG's PO Policy.

In response to "C" above, SCDHHS concurs with the finding and has made adjustments to its fiscal policies and procedures to prevent future violations of the approval process.

IV. P-Card Program Oversight

Internal Controls Over the P-Card Program Were Inadequate

DHHS Division of Internal Audits conducted a review of the P-Card Program for the period of July 1, 2014 through June 30, 2018 and issued its report, dated September 9, 2019. The report concluded that internal controls over the P-Card program were not adequate to control the risk of improper use of P-Cards. We commend DHHS Internal Audit for the work they have done.

As there have been extensive findings and recommendations by DHHS Internal Audit, and implementation of corrective action(s) is in process, we determined that additional review by Audit and Certification was not warranted.

A follow up review of management's implementation of corrective action(s) will be performed during the next annual P-Card audit.

Recommendation: We recommend DHHS provide DPS - Audit and Certification a copy of the next audit report on the agency's P-Card program upon completion, to include any corrective action plans submitted by DHHS Procurement Services in response to recommendations contained in the report.

Agency Response

SCDHHS concurs with this finding and as of January 1, 2021 has implemented proper controls and new P-card policies and procedures. We will also update the training program to correct these deficiencies and will provide Procurement Services -Audit and Certification a copy of the next P-Card audit as requested.

V. Contract Generated Outside of SCEIS

Per an exemption from the Code, DHHS awards contracts for Title XIX service providers following internal procedures. Pursuant to these procedures, DHHS initiates these outside SCEIS.

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Instead, DHHS uses Share Point for this purpose. However, we identified three contracts that were not subject to the exemption that DHHS set up in Share Point rather than SCEIS:

- a Call Center contract with the United Way for approximately \$4.9M,
- a contract for SC Thrive - Medicaid Application System for approximately \$6.7M, and
- a contract for the USC Poison Control Center for approximately \$3.7M

Each of these contracts was awarded following sole source procurement procedures.

We also found contracts extended on an emergency basis outside SCEIS that reference the original SCEIS contract number, but do not extend the contract termination date in SCEIS. As a result, non-exempt contracts were not included in the SCEIS system, and in instances where multi-term contracts extended beyond the seven-year maximum without SFAA approval and without multi-term contract determinations.

SCEIS provides flexible functionality and workflow, and has system controls in place to monitor contracts and vendors to reduce risk by:

- Generating contracts from a compendium of pre-approved clauses: which could presumably be enhanced to include the Form 102 clauses
- Establishing a workflow for approvals that will allow for electronic oversight
- Using a sequential numbering system to maintain the population of contracts to prevent and detect fraudulent contracts and payments

Contract and PO numbers generated outside SCEIS bypass a material system control; i.e., sequential numbering of all contracts and purchase orders in the state enterprise resource planning system.

Recommendation: We recommend DHHS design and implement policies and procedures to ensure contracts generated in DHHS' Share Point system are limited to only those executed pursuant to DHHS' exemption for Title XIX Service Provider Contracts that are paid as services are rendered to beneficiaries and tracked through the MMIS. All other contract numbers should be assigned in SCEIS, so the entire population of procurements and contracts are in the system.

We further recommend that all contracts have a SCEIS contract number assigned.

Agency Response

SCDHHS concurs with this finding and has already implemented this recommendation by creating contracts in SCEIS for all non-exempt contracts. SCDHHS has updated its Procurement Policies and Procedures Manual to incorporate this change.

RESULTS OF AUDIT

VI. Small and Minority Business Utilization Plans and Reports Not Filed or Filed Late

Thirteen of the 20 quarterly progress reports were not filed with SMBCC in a timely manner. The progress reports are required to be filed no later than 30 days after the end of the quarter. The goals for FYs 2015 to 2017 were obtained from the quarterly reports; however, the annual utilization plans were not provided for any of the years. The utilization plans are required to be submitted no later than 30 days after the end of the fiscal year.

SC Code Ann. § 11-35-5240 (2) states that MBE utilization plans be submitted to the SMBCC for approval no later than July 30th, annually, and that progress reports be submitted to the SMBCC no later than 30 days after the end of each fiscal quarter.

Recommendation: We recommend DHHS develop and implement procedures to comply with SC Code Ann. § 11-35-5240 (2) by submitting annual utilization plans and quarterly progress reports to the SC Division of Small and Minority Business Contracting and Certification in a timely manner.

Agency Response

SCDHHS concurs with this finding and has resolved the issues with timely reporting. Additionally, we intend to incorporate this report into our new contract management system which will further ensure accurate and timely reporting.

VII. Delays in Access to Procurement Records

We experienced unusual delays in response to requests for documentation or explanation during the audit. Required procurement records did not appear to be organized in a consistent manner or location for access by current procurement personnel. DHHS has experienced significant turnover, some unexpected and some due to retirement, in key procurement staff in recent years. At the time of the audit DHHS' Procurement Department had a number of open positions and inexperienced staff.

SC Code Ann. § 11-35-2430 - retention of procurement records, requires that all procurement records of governmental bodies shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of Archives and History after consultation with the Attorney General. Per Regulation 19-445.2005 (B) Procurement Records, each governmental body must maintain procurement files sufficient to satisfy the requirements of external audit.

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Recommendation: We recommend that DHHS develop and implement procedures that establish a consistent methodology for organization and location of required documentation of procurement activity as required by the Code and Regulations.

Agency Response

SCDHHS agrees that unusual delays occurred in responding to certain requests. As mentioned earlier the agency is currently implementing a new contract management system to assist in the lifecycle tracking and document retention and retrieval of all SCDHHS contracts and supporting documents. This will enable SCDHHS to be much more responsive to future audit requests.


CERTIFICATION RECOMMENDATION


We believe corrective action based on the recommendations in this report will make the Department of Health and Human Services' internal procurement operations consistent, in all material respects, with the South Carolina Consolidated Procurement Code and ensuing regulations.

As provided in SC Code Ann. § 11-35-1210, we recommend that the Department of Health and Human Services' procurement authority to make direct agency procurements be re-certified up to the following limits for three years:

<u>PROCUREMENT AREAS</u>	<u>CERTIFICATION LIMITS</u>
Service Provider Contracts ¹	*\$3,000,000 per contract per year.
Supplies and Services ²	*\$ 600,000 per commitment
Information Technology ³	*\$ 300,000 per commitment

*Total potential purchase commitment whether single year or multi-term contracts are used.


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¹ Provider being a Provider of Services directly to a client. Limit four one-year extension options.

² Supplies and Services includes non-IT consulting services

³ Information Technology includes consulting services for any aspect of information technology, systems and networks