

SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES

PROCUREMENT AUDIT REPORT

JULY 1, 2006 – SEPTEMBER 30, 2010

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February 28, 2011

Mr. R. Voight Shealy
Materials Management Officer
Division of Procurement Services
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Dear Voight:

We have examined the procurement policies and procedures of the South Carolina Department of Natural Resources for the period July 1, 2006 through September 30, 2010. As part of our examination, we studied and evaluated the system of internal controls over procurement transactions to the extent we considered necessary.

The evaluation established a basis for reliance upon the system of internal control to assure adherence to the Consolidated Procurement Code, State regulations and the Department's procurement policy. Additionally, the evaluation determined the nature, timing and extent of other auditing procedures necessary for developing an opinion on the adequacy, efficiency and effectiveness of the procurement system.

The administration of the South Carolina Department of Natural Resources is responsible for establishing and maintaining a system of internal controls over procurement transactions. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of control procedures. The objectives of a system of internal controls are to provide management with reasonable, but not absolute, assurance of the integrity of the procurement process, that affected assets are

safeguarded against loss from unauthorized use or disposition and those transactions are executed in accordance with management's authorization and recorded properly.

Because of inherent limitations in any system of internal controls, errors or irregularities may occur and not be detected. Also, 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 study and evaluation of the system of internal controls over procurement transactions, as well as our overall examination of procurement policies and procedures, were conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

The examination did, however, disclose conditions enumerated in this report which we believe need correction or improvement. Corrective action based on the recommendations described in these findings will in all material respects place the South Carolina Department of Natural Resources in compliance with the Consolidated Procurement Code and ensuing regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Aycock, IV". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Robert J. Aycock, IV, Manager
Audit and Certification

INTRODUCTION

We conducted an examination of the internal procurement operating policies and procedures of the South Carolina Department of Natural Resources. Our on-site review was conducted from September 17 through October 22, 2010, and was made under Section 11-35-1230(1) of the South Carolina Consolidated Procurement Code and Section 19-445.2020 of the accompanying regulations.

The examination was directed principally to determine whether, in all material respects, the procurement system's internal controls were adequate and the procurement procedures, as outlined in the Internal Procurement Operating Procedures Manual, were in compliance with the South Carolina Consolidated Procurement Code and its ensuing regulations.

On September 19, 2006 the State Budget and Control Board granted the South Carolina Department of Natural Resources the following procurement certifications:

<u>PROCUREMENT AREAS</u>	<u>CERTIFICATION LIMITS</u>
Supplies and Services	\$ 350,000 per commitment
Consultants	\$ 350,000 per commitment
Information Technology	\$ 50,000 per commitment
Construction Services	\$ 50,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

The South Carolina Department of Natural Resources requested to remain at the current certification levels. Our audit was performed primarily to determine if recertification is warranted.

SCOPE

We conducted our examination in accordance with Generally Accepted Auditing Standards as they apply to compliance audits. Our examination encompassed a detailed analysis of the internal procurement operating procedures of the South Carolina Department of Natural Resources, hereinafter referred to as the DNR, and its related policies and procedures manual to the extent we deemed necessary to formulate an opinion on the adequacy of the system to properly handle procurement transactions.

We selected samples for the period July 1, 2006 through September 30, 2010 of procurement transactions for compliance testing and performed other audit procedures that we considered necessary to formulate this opinion. Specifically, the scope of our audit included, but was not limited to a review of the following:

- (1) All sole source, emergency and trade-in sale procurements for the period July 1, 2006 through September 30, 2010 with an exception noted in Section I of the report
- (2) Procurement transactions for the period July 1, 2006 through June 30, 2010 as follows:
 - a) Ninety payments each exceeding \$2,500 with an exception noted in Section II of the report
 - b) Two-hundred and eighty seven sequentially filed purchase orders reviewed against the use of order splitting and favored vendors with no exceptions
 - c) Procurement card transactions for the months of November and December 2009 with no exceptions
- (3) Five construction contracts and six professional service contracts for compliance with the Manual for Planning and Execution of State Permanent Improvements with exceptions noted in Section III of the report
- (4) Minority Business Enterprise Plans and reports with the following activity reported to The Governor's Office of Small and Minority Business Assistance

<u>Fiscal Year</u>	<u>Goal</u>	<u>Actual</u>
2006-2007	\$ 748,879	\$380,513
2007-2008	\$ 796,239	\$285,005
2008-2009	\$ 3,097,992	\$207,981
2009-2010	\$ 1,709,654	\$ 41,490

- (5) Approval of the most recent Information Technology Plan with no exceptions
- (6) Internal procurement procedures manual with no exceptions
- (7) Surplus property disposition procedures with no exceptions
- (8) Ratification of Unauthorized Procurements with no exceptions
- (9) Blanket Purchase Agreements with no exceptions
- (10) File documentation and evidence of competition with no exceptions
- (11) Other tests performed as deemed necessary with no exceptions

SUMMARY OF RESULTS

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<p>One procurement made as sole source was inappropriate. DNR also entered into a three year agreement but failed to prepare a multi-term determination justifying the use of a contract that exceeded a year.</p>	
II. <u>Inappropriate Use of Exemption</u>	7
<p>An annual software subscription was inappropriately procured under a Board-granted exemption for software license renewals.</p>	
III. <u>Construction Services Procurements</u>	
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<p>DNR could not provide evidence that the Notice of Intended Awards and the bid tabulations were sent to all responsive bidders on the two construction not projects.</p>	
B. <u>Retention Exceeded Maximum Limit</u>	9
<p>DNR withheld 10% retention on payments for a construction contract whereas 3.5% is the maximum amount that can be withheld.</p>	
C. <u>Reports of IDC Activity Not Reported to the State Engineer</u>	9
<p>DNR did not submit quarterly reports of IDC activity to the Office of the State Engineer.</p>	

RESULTS OF EXAMINATION

I. Inappropriate Sole Source

DNR entered into a three year agreement to host Hunter/Boater Education events through a sole source determination on purchase order 4600029513 totaling \$14,259. The written determination authorizing the sole source did not justify the sole source procurement method. It stated the vendor currently provided the services. Competition should have been solicited. Additionally, DNR entered a three year agreement without a written determination justifying the use of a multi-term contract. Section 11-35-2030(1) of the Procurement Code states in part, "...Unless otherwise provided by law, a contract for supplies, services, or information technology must not be entered into for a period of more than one year unless approved in a manner prescribed by regulation of the board." Paragraph (2) of that same section requires a written determination justifying the use of a multi-term contract. The default in the Code requires agencies to limit contracts to one year unless agencies can show why extended term contracts serve the best interests of the State.

We recommend DNR compete Hunter/Boater education in the future and comply with the multi-term provisions of the Code.

DEPARTMENT RESPONSE

SC DNR concurs with this finding. DNR will ensure that all Contracts/Agreements entered into by the Agency, that exceeds 12 months without options to renew, will include a Multi-term Determination in the future. DNR Procurement staff will also be more diligent about the information used for justification of sole source procurements in the future.

II. Inappropriate Use of Exemption

Purchase order number 09 000289 dated July 18, 2008 in the amount of \$6,915 for Annual Software Subscription Service was procured under a Board-granted exemption for software license renewals. This procurement, however, did not meet the criteria established for the exemption since evidence could not be provided that the original software license had been competitively procured.

The Board exempted from the purchasing procedures of the Procurement Code license agreements for computer software after such software has been competitively bid as required by the Procurement Code. On April 22, 2008, the chief procurement officer (CPO) for information technology issued guidance¹ on this exemption. An excerpt from that document states, “If the software was procured through a competitive solicitation, then the renewal of that license is exempt.”

We recommend DNR follow the CPO guidance in using this exemption.

DEPARTMENT RESPONSE

SC DNR concurs with this finding. SC DNR did not purchase this software subscription, it was brought to the agency through reconstruction, and because the agency that made the purchase no longer exists we are unable to make a definitive determination on how the software was originally procured. We understand from our IT Director that this is proprietary software to ERDAS and as such would probably have been Sole Sourced from ERDAS. As such it would not qualify for the Board-granted exemption. Since this software subscription service does not qualify for the Board-granted exemption it will be renewed through Sole Source in the future.

III. Construction Services Procurements

A. Notice of Intended Awards and Bid Tabulations not Sent

DNR could not provide evidence that the Notice of Intended Awards and the bid tabulations were sent to all responsive bidders on the following construction projects.

<u>Project Number</u>	<u>Description</u>	<u>Amount</u>
P24-9910-PG	Quarantine Officers' Qtr Renovations	\$ 65,998
P24-9911-PG	MRRI floor repairs	\$3,013,000

Section 11-35-3020(c)(i) of the Code requires governmental bodies to promptly send all responsive bidders a copy of the Notice of Intended Award and the bid tabulation for construction procurements.

¹ The full text of the CPO guidance is available on the web at:
http://www.mmo.sc.gov/MMO/webfiles/MMO_POL_GD/Exemption_78_Clarification.pdf

We recommend that in the future DNR comply with Section 11-35-3020(c)(i) of the Code by providing the Notice of Intended Award and the bid tabulation to all responsive bidders on its construction procurements.

DEPARTMENT RESPONSE

It has been the agency's practice in the past to notify all responsive bidders via hardcopy mail. Staff is 100% certain that notices were sent on both of the projects in question, however, SC DNR concurs that such evidence could not be provided. To prevent a reoccurrence, in the future staff will send notices via email, which will provide the required audit trail.

B. Retention Exceeded Maximum Limit

DNR withheld 10% retention on payments for a construction contract on Project Number P24-9911-PG. Section 11-35-3030 (4)(a) states in part, "...the retained amount of each progress payment or installment must be no more than three and one-half percent."

We recommend DNR limit the amount of retention to no more than 3.5% allowed by the Code.

DEPARTMENT RESPONSE

Project Number P24-991-PG was unique in that it was a design/build project for which the State Engineer's Office (SEO) did not have a specific contract template. Therefore, the vendor was asked to write a contract which was sent to the SEO for review and approval. The vendor included the standard retention percentage for private industry not realizing that state projects are limited by the Code to 3.5%. The contract followed the proper chain of approvals and no one noticed the higher retention percentage. Closer attention will be paid to contract terms such as this in the future.

C. Reports of IDC Activity Not Reported to the State Engineer

A review of IDC activity for the audit period revealed DNR had not submitted quarterly reports of IDC use to the Office of the State Engineer (OSE) as required by Section 9.1.1(D) of the Manual for Planning and Execution of State Permanent Improvements, Part II, (OSE Manual).

We recommend DNR submit quarterly reports of all IDC activity to the OSE as required by the OSE Manual. Adhering to reporting requirements will strengthen internal controls over IDC usage since this information is reviewed by the OSE. Amended reports must be filed.

DEPARTMENT RESPONSE

There was no IDC activity during the audit period. Staff was not aware reports had to be filed even if there was no activity to report. Amended reports will be submitted and reports will be sent quarterly from here on out.

CERTIFICATION RECOMMENDATIONS

As enumerated in our transmittal letter, corrective action based on the recommendations described in this report, we believe, will in all material respects place the South Carolina Department of Natural Resources in compliance with the Consolidated Procurement Code and ensuing regulations.

Under the authority described in Section 11-35-1210 of the South Carolina Consolidated Procurement Code, subject to this corrective action, we will recommend that The Department of Natural Resources be recertified to make direct agency procurements for three years up to the limits² as follows:

PROCUREMENT AREAS

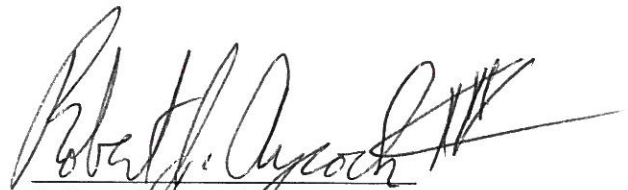
CERTIFICATION LIMITS

Supplies and Services	*\$ 350,000 per commitment
Consultants	*\$ 350,000 per commitment
Construction Contract Change Order	\$ 25,000 per change order
Architect/Engineer Contract Amendment	\$ 5,000 per amendment

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



Allen R. Townsend, CBM
Audit Manager



Robert J. Aycock, IV, Manager
Audit and Certification

² DNR's previous certification limits included \$50,000 for information technology and construction procurements. Since the last certification was granted by the Budget and Control Board, the Procurement Code's basic authority limits increased to \$50,000. Therefore, by statute, DNR has \$50,000 in information technology and construction procurement authority making a certification recommendation for this amount unnecessary.

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May 25, 2011

Mr. R. Voight Shealy
Materials Management Officer
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1201 Main Street, Suite 600
Columbia, South Carolina 29201

Dear Voight:

We have reviewed the response from the Department of Natural Resources to our audit report for the period of July 1, 2006 to September 30, 2010. Also we have followed the Department's corrective action during and subsequent to our fieldwork. We are satisfied that the Department of Natural Resources has corrected the problem areas and the internal controls over the procurement system are adequate.

Therefore, we recommend the Budget and Control Board grant the Department of Natural Resources the certification limits noted in our report for a period of three years.

Sincerely,

Robert J. Aycock, IV, Manager
Audit and Certification

RJA/gs

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