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State Budget and Control Board
PROCUREMENT SERVICES DIVISION

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R. VOIGHT SHEALY
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ANNOUNCEMENT

STATE ENACTS S.572, AMENDMENTS TO THE CONSOLIDATED PROCUREMENT CODE

Voight Shealy

FROM: Voight Shealy
Materials Management Officer

DATE: June 16, 2006

On June 13, 2006, Governor Mark Sanford signed into law S.572, our proposed amendments to the Consolidated Procurement Code. The Act is available at http://www.scstatehouse.net/sess116_2005-2006/bills/572.htm. The Act became effective immediately with his signature so it is in effect now. While the Act is far too comprehensive to address every amendment in this correspondence, I believe there are certain changes that you need to know, as they govern your routine activities as we speak. Let me address what I believe you need to implement now.

- 11-35-310(35), the definition of a term contract, has been amended to require now that the using agency document the use of the 10% provision, (which allows for off term contract buying), in sufficient detail to satisfy the requirements of an external audit.
- 11-35-1550, the small purchase procedures, have been amended significantly as follows:
 - The small purchase threshold has been increased from \$25,000 to \$50,000;
 - Every state agency has been certified to manage its own procurements up to \$50,000;
 - The lower thresholds have been amended as follows:

<u>New Threshold</u>	<u>Competition Required</u>
▪ \$2,500	None
▪ \$2,500 - \$10,000	Verbal solicitation of 3 written quotes
▪ \$10,000 - \$50,000	SCBO advertisement & written RFQs for written quotes

Note: Due to the increase in the first competition threshold, we are increasing the transaction limit for procurement cards from \$1,500 to \$2,500.

- 11-35-1520, the sealed bid procedures (as well as all other formal solicitation methods), have been amended to begin at >\$50,000. Further, they have been amended to:
 - Allow consideration of certification by the Office of Small and Minority Business Assistance as the third step in the process to break tie bids;
 - Increase the level at which an intent to award is required from \$50,000 to \$100,000;
 - Reduce the number of days required for an intent to award from 16 to 10;
 - Require that agencies send all bidders award statements and intents to award on the same day they are posted;
 - Discontinue the requirement that a request for qualifications prior to an invitation for bids be approved by the Office of General Services.

- 11-35-1530, the request for proposal procedures, have been amended to:
 - Allow discussions with offerors who “submitted proposals determined to be “reasonably susceptible of being selected for award””;
 - Allow negotiations to include “matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals.” *Previously, negotiations were arguably allowed only to adjust price or scope, not both.*

- 11-35-1575, the procedures for procurements at auctions, may also be used for “a sale of supplies from a bankruptcy”.

- 11-35-1825, the procedures for prequalification of construction contractors, allows for the prequalification of subcontractors also now.

- 11-35-3020, the procedures for awarding construction contracts, have been amended to:
 - Shorten the intent to award period – **10** days waiting period; agency may enter into a contract on the 11th day [*was 16 Days*];
 - Increase the authority to negotiate after unsuccessful competitive sealed bidding when bids exceed available funds, circumstances do not permit the time to re-bid, and the base bid less any deductive alternates, does not exceed available funds by an amount greater than **10%** of the construction budget. [*was 5%*].

- 11-35-3030, the bid security requirement, was amended to require bidding security for all competitive sealed bidding for construction contracts in excess of \$50,000 [*was \$100,000*].

- 11-35-3220, the procedures for selecting an architect, engineer, or land surveyor, have been amended to reduce the minimum number of firms to be ranked for interviews from *five* to three.
 - Further, the Architectural and Engineering selection procedures have been amended to require that the agency selection committee evaluate each of the persons or firms interviewed based on the following **9** criteria [*was 7*] (**changes are in bold**):
 - (a) past performance;
 - (b) the ability of professional personnel;
 - (c) demonstrated ability to meet time and budget requirements;

- (d) location and knowledge of the locality of the project if the application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project
- (e) recent, current and projected work loads of the firms;
- (f) creativity and insight related to the project;
- (g) related experience on similar projects,
- (h) volume of work awarded by the using agency to the person or firm during the previous five years, with the objective of effectuating an equitable distribution of contracts by the State among qualified firms including Minority Business Enterprises certified by the South Carolina Office of Small Minority Business Assistance and firms that have not had previous state work; and
- (i) Any other special qualification required pursuant to the solicitation of the using agency

- 11-35-3230, the small purchase procedures for the selection of architects, engineers, and land surveyors, have been amended to authorize every state agency to award such contracts up to \$25,000 without the approval of the State Engineer's Office. **Submission of contracts awarded is still required.**
- 11-35-4210, the protest procedures, has been amended to:
 - Start the time allowed for filing a protest of a solicitation when the solicitation is actually posted (advertised in SCBO or posted to the Board's means of central electronic advertising, <http://www.procurement.sc.gov/>) not the date shown on the solicitation document;
 - Shorten the number of days allowed for actual bidders to protest an award from fifteen to ten. If an actual bidder notifies the chief procurement officer within ten days of his intent to protest, that bidder will be allowed another five days to perfect his protest;
 - Disallow protests for awards of potential value less than \$50,000;
 - Require a chief procurement officer to commence his administrative review of a protest within fifteen business days after the end of the protest period;
 - Require all agencies to include a notice of the address of the appropriate chief procurement officer in every solicitation, notice of award, and intended award >\$50,000.
- 11-35-4410, the procedures of the Procurement Review Panel, have been amended to require the Panel to convene the Panel to commence and administrative review or schedule a hearing within ten working days. The time allowed for the Panel to publish its decisions has been shortened from thirty days to ten working days.
- 11-35-5240, the procedures for assisting small and minority vendors, have been amended to:
 - Allow the chief procurement officers to waive certain user or subscription fees for minority business enterprises certified by the Office of Small and Minority Business Assistance (SMBAO);
 - Increase the tax credits available to firms subcontracting with firms certified by the Office of Small and Minority Business Assistance from \$25,000 to \$50,000 annually. The period in which the firm is allowed to claim the tax credit is increased from five years to ten years;
 - Set the goal for spending with certified MBEs and WBEs at ten percent (10%). Agencies may petition the SMBAO to file a plan with a goal less than 10%;

- Require the Executive director of the Budget and Control Board to define the term “total dollar amount of funds expended”.

Realizing that these changes require further discussion, the Information Technology Management Office and the Division of Procurement Services (MMO) plan to conduct a Board Procurement Update on July 20, 2006 at the Alexander Donald Forum (The Forum) at the Dept. of Mental Health, which is a part of William S. Hall Institute. The agenda has not been completed as of this date. We will share it with you very soon. If you plan to attend the update, you may register on our training web site at <http://www.ogs.state.sc.us/mmo/MMO-courses.phtm>. We need to know how many people will be in attendance.