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## Memorandum

TO: State Agency Procurement Officials

FROM: Voight Shealy  
Materials Management Officer

SUBJECT: Evaluation of State Term Contract Pricing  
Reporting of Use of the 10% Rule

DATE: April 18, 2011

To better serve you, we need your help. 11-35-310(35), definition of term contract, provides in part what we all refer to as the 10% rule. It allows governmental bodies covered by the Consolidated Procurement Code the ability to go off otherwise mandatory state term contracts when an alternate vendor offers a price that is at least ten percent less than the term contract price, provided you offer the term contract vendor the option to meet the lower price. We need to know when this happens so we can better monitor our term contract pricing. If our contractors are getting beat by the 10% rule, we need to re-evaluate our contract pricing. We can only do this if you tell us when you exercise the 10% rule. Another reason we need to monitor this activity is the statute provides that the requirements of the term contract are applicable to the vendor offering the lower price. In other words, the vendor offering the lower price is bound by all terms and conditions of the term contract. The items or services and delivery terms must be the same; and any other special terms and conditions provided in the term contract applies.

In order to obtain this information, under authority of S.C. Code Section 11-35-1220, the chief procurement officers will require you to report each quarter any activity exercised using the 10% rule starting with the April 1 through June 30, 2011 quarter. Please report this activity when you submit your sole source, emergency, trade-in sale, preferences and illegal procurement reports. We are providing you with a reporting format on our website at:

[http://www.mmo.sc.gov/MMO/webfiles/MMO\\_audit/Audit%20Program/quarterly\\_reporting\\_20110418.xls](http://www.mmo.sc.gov/MMO/webfiles/MMO_audit/Audit%20Program/quarterly_reporting_20110418.xls).

Thank you for your participation.