

WINTHROP UNIVERSITY
PROCUREMENT AUDIT REPORT
JANUARY 1, 2007 – DECEMBER 31, 2010

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NOTE: The University’s responses to issues noted in the report have been inserted immediately following the items they refer to.

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**MARCIA S. ADAMS
EXECUTIVE DIRECTOR**

October 15, 2012

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 Winthrop University for the period January 1, 2007 through December 31, 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 controls to assure adherence to the Consolidated Procurement Code, State regulations and the procurement policies of Winthrop University. 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 Winthrop University 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 that 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 Winthrop University 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 long horizontal flourish extending to the right.

Robert J. Aycock, IV, Manager
Audit and Certification

INTRODUCTION

We conducted an examination of the internal procurement operating policies and procedures of Winthrop University. We conducted our on-site review from March 28 through April 15, 2011. Our review 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 June 12, 2007 the State Budget and Control Board granted Winthrop University the following procurement certifications:

<u>PROCUREMENT AREAS</u>	<u>CERTIFICATION LIMITS</u>
Goods and Services	\$ 200,000 per commitment
Consultant Services	\$ 200,000 per commitment
Information Technology	\$ 200,000 per commitment ¹
Construction Services	\$ 100,000 per commitment
Construction Contract Change Order	\$ 50,000 per change order
Architect/Engineer Contract Amendment	\$ 25,000 per amendment

¹ On July 31, 2008 the Chief Procurement Officer for Information Technology for the State of South Carolina communicated to the President of Winthrop University, in accordance with B&CB Regulation 19-445.2022, that due to inappropriate procurement actions by Winthrop in acquiring the Enterprise Resource Management system, Winthrop's authority to conduct information technology procurements was being reduced to those with a total potential value less than \$25,000, (from \$200,000). This reduction would be in effect until assurance could be provided that proper internal controls were in place to ensure compliance with procurement laws; additional procurement training has been received by the procurement staff, and completion of a satisfactory procurement audit.

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 Winthrop University 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 January 1, 2007 through December 31, 2010 of procurement transactions for compliance testing and performed other audit procedures that we considered necessary to formulate our 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 January 1, 2007 through December 31, 2010 with exceptions noted in Section II of the report
- (2) Procurement transactions for the period January 1, 2007 through December 31, 2010 as follows:
 - a) Ninety-eight payments each exceeding \$2,500 with exceptions noted in Sections III and IV, of the report
 - b) Eighteen direct payments each exceeding \$2,500 with no exceptions
 - c) Three construction contracts and eleven professional service contracts for compliance with the Manual for Planning and Execution of State Permanent Improvements Part II with exceptions noted in Section VII of the report
 - d) Five-hundred and eighty sequentially filed purchase orders reviewed against the use of order splitting and favored vendors with no exceptions
 - e) Procurement card transactions for the months of October – December 2010 with exceptions noted in Section V of the report
- (3) Minority Business Enterprise Plans and reports with an exception noted in Section VIII of the report
- (4) Approval of the most recent Information Technology Plan with no exceptions
- (5) Internal procurement procedures manual with no exceptions
- (6) Surplus property disposition procedures with no exceptions
- (7) Ratification of Unauthorized Procurements with no exceptions
- (8) File documentation and evidence of competition with no exceptions
- (9) Other tests performed as deemed necessary with no exceptions

SUMMARY OF RESULTS

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I. <u>Procurement of \$18.9 Million Student Housing Facility Not Completed</u>	7
<p>Winthrop acquired the construction and beneficial use of a built-to-suit student housing facility. The transaction was subject to the requirements of the State's Consolidated Procurement Code; however, Winthrop did not comply with the Code when it entered the contract.</p>	
II. <u>Sole Source Procurements</u>	
A. <u>Inappropriate ERP Sole Source Procurement</u>	9
<p>On July 31, 2008, the Chief Procurement Officer (CPO) for Information Technology reduced Winthrop's information technology (IT) procurement certification from \$200,000 to \$25,000 because Winthrop inappropriately authorized a sole source contract for an ERP system. \$4.6 million has been inappropriately spent under sole source contracts.</p>	
B. <u>No Drug-Free Workplace Certification</u>	10
<p>Winthrop failed to obtain vendor certifications indicating they maintained drug-free workplaces.</p>	
III. <u>Award Notices Not Sent to Bidders</u>	11
<p>Winthrop could not show evidence that award notices were sent to all bidders.</p>	
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<p>Winthrop required mandatory pre-bid conferences without having authorization to do so.</p>	
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<p>In accordance with reporting standards, we report a fraud that occurred during our audit period at Winthrop within the context of this audit that was originally identified and investigated by Winthrop. Winthrop's Internal Audit Office revealed the employee defrauded \$209,241.</p>	

VII. Construction Services Notice of Intended Awards and Bid Tabulations not Provided 14

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

VIII. Minority Business Assistance 15

Our review of Winthrop's Minority Business Enterprise quarterly reports showed Winthrop set reasonable expenditure goals but failed to follow through on its expenditures to the State's certified small and minority businesses.

RESULTS OF EXAMINATION

I. Procurement of \$18.9 Million Student Housing Facility Not Completed

The acquisition of an \$18.9 million student housing facility was not procured in accordance with the State's Procurement Code.

Winthrop University Real Estate Foundation, Inc. ("Foundation"), is a not-for-profit corporation which, according to its by-laws, was "created solely for the benefit of Winthrop University." Beginning at least as early as 2001, the Foundation worked with a private developer to arrange construction of a new dormitory for Winthrop students. To this end, the Foundation created a limited liability corporation called WUREF Development, LLC ("WUREF"). Using WUREF as the vehicle, the Foundation consummated its construction of the residence hall, financed by the issuance of tax-free revenue bonds. Integral to the bond issue is a "Management Agreement" between WUREF and Winthrop.

Pursuant to the Management Agreement, Winthrop effectively acquired the beneficial use of a housing facility known as The Courtyard, used it to replace, in part, existing student housing facilities, and relied on it to satisfy its general need for additional campus housing. Winthrop transferred students from Winthrop owned housing to The Courtyard, instituted an ongoing process of student-tenant referrals to The Courtyard, and agreed to treat the newly constructed student housing facility – for all intents and purposes - as its own. Winthrop collects funds (security deposits and rents) from student tenants and, in accordance with Winthrop guidelines, maintains them in accounts for security deposits, rental revenue, repair and replacement, and operations contingencies. Winthrop pays substantial portions of those funds directly to WUREF. Others are used to pay third party vendors for a variety of expenses necessary for the facility's operations and maintenance, payments Winthrop is contractually obligated to incur. Despite its contractual rights to collect payment for an annual maintenance fee, Winthrop agreed to defer payment "as is necessary for [WUREF] to achieve the debt service coverage ratio required by the credit facility provider for the Project." According to Winthrop, it has, however, collected \$945,690 under this agreement.

In addition to the foregoing obligations, Winthrop also granted the Foundation's limited liability corporation, with extremely limited exceptions, an exclusive right to student-tenant referrals (even with respect to Winthrop-owned facilities) and agreed not to build public facilities that would compete with The Courtyard project. These two obligations are not terminable and effectively continue until such time as the debt obligations are fully paid. Even before the Management Agreement was executed, Winthrop was substantially involved in the construction design of The Courtyard and in the preparation of the financial projections used for the Bond issuance.

On these facts, we conclude that, through the Management Agreement, Winthrop acquired construction in the form of development of the dormitory by the foundation. Winthrop's acquisition of development of the dormitory was subject to the Procurement Code. Further, the Management Agreement requires that Winthrop operate and maintain the dormitory. Procurements made by Winthrop during the conduct of the management agreement are also subject to the Procurement Code—as the Code existed in 2002 and as it has been amended since then.

Because Winthrop failed to comply with the Procurement Code in any respect, the Management Agreement is an illegal contract. The illegality may be cured by ratification in accordance with the applicable version (pre-2007 changes) of Regulation 19-445.2015 or terminated.

Despite the Division of Procurement Service's finding that the 2002 Management Agreement is illegal, no one who could be considered an interested party has objected to its vitality. The Audit Report is the first time the illegality of this contract was noted. No one has suggested that the University's failure to comply with the Procurement Code was knowing or intentional. WUREF and the University have performed their obligations under this agreement for nearly ten years. Further, before issuing this audit report for the period ending December 31, 2010, the Division of Procurement Services had not requested a legal analysis of the application of the State's Procurement Code of transactions similar to the ones at issue here.

We recommend going forward, that Winthrop must acknowledge that acquisitions of major capital improvements, however creatively they may be structured, should be procured in accordance with the State's Procurement Code, including those provisions for the competitive award of such contracts.

University's Response

Winthrop University and the Winthrop University Real Estate Foundation did not knowingly or intentionally fail to comply with the Procurement Code. This has not happened again in the last ten years and will not happen in the future.

II. Sole Source Procurements

Section 11-35-1560 of the Procurement Code authorizes the use of sole source procurements when it is determined in writing that there is only one source for the required supply, service, information technology, or construction item. The written determination must explain why no other will be suitable or acceptable to meet the need. We noted the following exceptions.

A. Inappropriate ERP Sole Source Procurement

On July 31, 2008, the Chief Procurement Officer (CPO) for Information Technology for the State of South Carolina sent a letter (see Attachment A) to Winthrop University reducing Winthrop's information technology (IT) procurement certification under Regulation 19-445.2022 from \$200,000 to those IT items or services with a total potential value less than \$25,000. The CPO communicated the reduction in authority to the President of Winthrop citing a variety of reasons all surrounding an inappropriate sole source for an Enterprise Resource Management (ERP) system. Prior to Winthrop entering the sole source agreement, the CPO had advised Winthrop that the procurement was not a sole source and competition was available. In fact, the ERP was successfully competed for other South Carolina institutions. Winthrop proceeded with the sole source anyway. Including the initial sole source, Winthrop's total sole sources for the ERP equaled to \$4,597,317. Had Winthrop heeded the CPO's advice, all of the procurements could have been entered through one competitive solicitation.

Because Winthrop proceeded with the sole source for its ERP system, the CPO took the following actions.

- 1) Reduced Winthrop's Information Technology certification from \$200,000 to \$25,000, the lowest amount allowed by Regulation
- 2) Directed that Winthrop's IT procurement staff receive additional procurement training
- 3) Audit and Certification team complete a satisfactory audit

Given the suspension of IT certification since July 31, 2008 and that the audit confirmed Winthrop's adherence to the CPO's stipulations, we do not believe any further sanctions are necessary.

University's Response

We concur.

B. No Drug-Free Workplace Certification

Winthrop failed to obtain vendor certifications indicating they maintained drug-free workplaces in accordance with South Carolina law prior to awarding contracts for the following sole source procurements.

<u>PO#</u>	<u>PO Date</u>	<u>Description</u>	<u>Cost</u>
P711685	02/19/07	Software	\$ 80,000.00
P711772	03/07/07	Maintenance Agreement	\$ 58,605.00
P910090	06/20/07	Maintenance Contract	\$ 55,691.37
P810586	08/22/07	Site License	\$ 54,640.00
P810823	09/21/07	Software	\$282,289.00
P811666	02/14/08	Analytical Pump System	\$167,035.00
P811750	02/27/08	Overhead Ceiling	\$107,122.40
P811761	02/28/08	Spectropolarimeter	\$ 88,703.50
P811938	03/31/08	Maintenance Agreement	\$ 55,800.00
P910081	06/23/08	Xerox Docutech	\$ 90,000.00
P1100577	08/26/10	Maintenance Fee	\$ 60,000.00
P1101210	11/11/10	Conference	\$100,750.00

Section 44-107-30 of the Drug-Free Workplace Act requires a written certification from vendors on any contract of \$50,000 or more stating the vendor provides a drug-free workplace. Sole Source procurements are subject to this Act.

We recommend Winthrop obtain drug-free workplace certifications from vendors on all future contracts of \$50,000 or more, as required by the Act.

University's Response

We concur. It is Winthrop's policy to require drug free certification on competitive procurements. We now have a document/policy in place to solicit the same type of certification for non-competitive procurements such as sole sources.

III. Award Notices Not Sent to Bidders

Evidence could not be provided by Winthrop showing award notices were sent to all bidders for the following transactions.

<u>PO #</u>	<u>PO Date</u>	<u>PO Amount</u>	<u>Contract Value</u>	<u>Description</u>
P1100113	07/06/10	\$18,750.00	\$ 62,500.00	Tree Services
P1100137	07/08/10	\$39,780.00	\$233,031.00	Campus-Wide Carpet Cleaning
P1100191	07/12/10	\$51,169.60	\$138,766.00	Turf Management
P1100565	08/25/10	\$ 9,400.00	\$200,000.00	Sign Language Interpreter
P1002094	05/28/10	\$ 2,700.00	\$112,740.00	Exterminator Services

Section 11-35-1520(10) of the Code requires for contracts with a total or potential value in excess of \$50,000, but less than \$100,000, notice of award must be given by posting and must be sent to all bidders responding to the solicitation. Additionally, for contracts in excess of \$100,000, notice of intended award must be posted for ten days before entering into a contract and must be sent to all bidders responding to the solicitation.

We recommend that award notices be provided to all bidders responding to solicitations for all contacts in excess of \$50,000. Evidence of this action must be maintained in the procurement file.

University's Response

We concur. It is Winthrop's policy to notify bidders by posting the award on our website. In addition, the University contacts all participants by the best means possible. Email is the preferred method; however, on occasion, some providers of services and products do not have the means to receive an email or fax; therefore, the documents are mailed. In the cases of the PO's noted above, there is enough indication that many of these were mailed; in mailing a document, there is no concrete trail; this has been our policy from day one. We have examined Section 11-35-1520(10) of the Code, and we do not see that "evidence must be maintained in the file." We believe we are following the procedure, but from this point forward, we will maintain evidence in the file with a buyer's handwritten note when documents are US mailed.

IV. Determinations to Authorize Mandatory Pre-Bid Conferences Not Prepared

Winthrop procured services for both Elevator Maintenance, (IFB 07-R602327/TS with a potential value of \$160,500), and Extermination (IFB 10-R1000620/TS with a potential value of \$112,740) requiring mandatory pre-bid conferences without having authorization to do so. Regulation 19-445.2042(C) states in part, "Pre-bid conferences may not be made mandatory absent a written determination by the head of the government body or his designee that the unique nature of the procurement justifies a mandatory pre-bid conference and that a mandatory pre-bid conference will not unduly restrict competition."

We recommend Winthrop comply with the mandatory pre-bid conference provision of the Regulation.

University's Response

We concur. However, it should be noted that mandatory site visits at Winthrop University are rare and discouraged. As we cannot find a written determination standard form on MMO's website, we have developed our own form.

V. No Procurement Card Transaction Limits

Our review of Winthrop's procurement cards revealed eight card holders without transaction limits. The Division of Procurement Services Materials Management Office South Carolina Purchasing Card Policy and Procedures manual establishes minimum standards for use of the P-Card in order to ensure compliance with all applicable State laws pertaining to purchasing as contained in the State Code. Section D(1) of the manual established that each P-Card is subject to the "no compete" (\$2,500) Purchase Limit. Section D(2) states, "To raise or lower the Single Purchase Limit, the P-Card Administrator must submit the requested change in writing (E-mail or memo) to the MMO Chief Procurement Officer." On August 1,

2011, the Higher Education Efficiency and Administrative Policies Act became law authorizing college and university governing boards to raise procurement card single transaction limits up to \$10,000. However, this amendment to the Code was not in effect at the time these exceptions occurred.

We recommend Winthrop establish single transaction limits on all procurement cards in accordance with State policies.

University's Response

We concur. The University did not assign a transaction limit on selected cards for senior management and certain exempt purchases. Per the Division of Procurement Services Materials Management Office South Carolina Purchasing Card Policy and Procedures revised May 5, 2010: Section II (page 1) A3. "Institutions of Higher Education have delegated authority that allows payments to be made from Agency checking accounts. Purchases of supplies and services are generally limited to transaction under \$2,500, but these Agencies may authorize greater purchase in accordance with the code." The University interpreted this statement to allow these types of limits. However, we have now established limits on all procurement cards.

VI. Former Supervisor of Printing Services Defrauded Winthrop

Government Auditing Standards Chapter 8: Reporting Standards for Performance Audits, published by the US Government Accountability Office, paragraph 8.18 states,

Auditors should report deficiencies in internal control that are significant within the context of the objectives of the audit, all instances of fraud, illegal acts unless they are inconsequential within the context of the audit objectives, significant violations of provisions of contracts or grant agreements, and significant abuse that have occurred or are likely to have occurred.

In accordance with this reporting standard, we report a fraud that occurred during our audit period at Winthrop within the context of this audit that was originally identified and investigated by Winthrop. We learned that Winthrop's Budget Office first discovered a potential problem when the Office reviewed increased costs in printing. This led to an internal audit by Winthrop of the print shop which revealed evidence that an employee had been defrauding Winthrop. The internal audit revealed the employee defrauded Winthrop out of \$209,241. The employee used an internet based payment service to send fraudulent invoices to his department for approximately 85% of the total theft. The procurement card was then used to pay for the fraudulent invoices. The other approximately 15% of the fraudulent activities

involved a local printing company. The printing company issued a check to the employee for different amounts. The employee then allowed the printing company to charge Winthrop an amount substantially higher than the amount of the check received. The employee was arrested and criminal charges filed. According to Winthrop officials, local law enforcement decided not to prosecute the print company pending its testimony against the now former employee.

Winthrop's Internal Audit (IA) Office filed insurance claims for fraudulent activities. Further, IA presented recommendations to the Winthrop President to include:

- Supervisors are responsible for reviewing subordinate's monthly statements, supporting documentation, and reconciliation
- Controller's office has assigned members of the staff to conduct periodic audits of procurement cards for compliance with State and Winthrop policies
- Winthrop's Budget Office will investigate and resolve major variances of actual to budgeted transaction totals
- The forming of a committee, which meets quarterly to discuss areas of concerns over procurement cards. The committee will be made up of individuals from the following offices: Controllers, Procurement, Budget, and Internal Audit

We have no further recommendations.

University's Response

We Concur.

VII. Construction Services Notice of Intended Awards and Bid Tabulations not Provided

Winthrop 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: project H47-995-GW-B for the Thurmond Auditorium addition and project H47-9561-MJ-C for the Ebenezer Avenue improvements. 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.

We recommend that in the future Winthrop 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 projects.

University's Response

We Concur.

VIII. Minority Business Assistance

Our review of Winthrop's Minority Business Enterprise quarterly reports that are submitted to The Governor's Office of Small and Minority Business Assistance (OSMBA) revealed little to no expenditures by Winthrop to certified small and minority businesses over the audit period. Winthrop set reasonable expenditure goals but failed to follow through on its expenditures.

<u>Fiscal Year</u>	<u>Goal</u>	<u>Actual</u>
2006-2007	\$1,001,254	\$40,623
2007-2008	\$1,366,667	\$ 7,125
2008-2009	\$1,280,488	\$ 0
2009-2010	\$1,377,339	\$ 0

It is apparent that Winthrop has not established as a priority the use of certified Minority Business Enterprises. We recommend Winthrop become more aggressive in attaining its goals in making expenditures to the State's certified small and minority businesses.

University's Response

We Concur.

CERTIFICATION RECOMMENDATIONS


We must state concern over the exceptions listed in this report. For this reason, we are recommending Winthrop University’s procurement certification be cut in half as outlined below. We will perform an examination and report back to the Budget and Control Board in one year to determine if Winthrop’s certification should be restored to its previous levels.

As enumerated in our transmittal letter, corrective action based on the recommendations described in this report, we believe, will in all material respects place Winthrop University 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 the corrective action outlined in the report, we recommend Winthrop University be recertified to make direct agency procurements for one year as follows:

<u>PROCUREMENT AREAS</u>	<u>CERTIFICATION LIMITS</u>
Supplies and Services	*\$ 100,000 per commitment
Consultant Services	*\$ 100,000 per commitment
Construction Services	\$ 100,000 per commitment
Construction Contract Change Order	\$ 50,000 per change order
Architect/Engineer Contract Amendment	\$ 25,000 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

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MARCIA S. ADAMS
EXECUTIVE DIRECTOR

October 15, 2012

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

Dear Voight:

We have reviewed the response from Winthrop University to our audit report for the period of January 1, 2007 through December 31, 2010. We have followed-up on Winthrop University's corrective action during and subsequent to our fieldwork.

We will perform an examination within one year to determine if Winthrop's certification should be restored to its previous levels.

Sincerely,

Robert J. Aycock, IV, Manager
Audit and Certification

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July 31, 2008

Dr. Anthony J. DiGiorgio, President
Winthrop University
114 Tillman Hall
Rock Hill, SC 29733

Dear Dr. DiGiorgio,

I am the Chief Procurement Officer for Information Technology for the State of South Carolina. In that capacity, I am responsible for the administration of all information technology procurements. Certain information has come to my attention about the procurement and contracting practices at Winthrop University that cause me great concern and I would like to make you aware of these issues and the potential ramifications.

In May of 2007, I had several conversations with the procurement directors from the Citadel, College of Charleston, and Winthrop University about the need to replace their existing Enterprise Resource Management (ERP) systems. At the time, all three organizations were using a system from Sunguard Higher Education called Plus. Use of the Plus product is governed by a unique set of software licenses issued to each organization. Over the life of the Plus product, upgrades and patches to the product have been provided through a software maintenance agreement tied directly to the existing software licenses. As you may know, the Plus product is fast approaching the end of its technological life and Sunguard is touting a new product called Banner as a "replacement" for Plus. Banner is a new product that requires a new set of unique software licenses covered by a new software maintenance agreement, and requiring extensive services from SunGuard to install. While Banner may be a replacement, it is not an upgrade to the Plus product. The procurement directors were advised that the most appropriate method to replace the Plus product was to conduct a competitive procurement and award a contract for a new ERP.

Dr. Anthony J. DiGiorgio
August 1, 2008
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The College of Charleston and the Citadel decided to conduct separate procurements for their new ERP. Winthrop apparently decided to follow a different course of action which, with the subsequent explanations, gives cause for concern.

On December 21, 2007, Winthrop amended License, Maintenance, and Services Agreements with SunGuard that were originally signed in 1991 for the Plus product. The 2007 amendments added the Banner product, Banner maintenance, and installation services for the Banner product valued at more than \$9,000,000. These amendments are problematic for a number of reasons. First, no state contract may exceed 5 years without express approval of the Budget and Control Board. There is no indication that Board approval was ever requested or granted in this case meaning that the original contract expired in 1996. It appears Winthrop amended a contract 11 years after it expired. Winthrop claims that, by virtue of an exemption from the procurement code for the renewal of previously competed software licenses, the contracts for these products, maintenance and services were not expired. Regardless, Banner is a new product with a new set of licenses and not an upgrade to the Plus product, so these products and services are outside the scope of the 1991 contract. Finally, Winthrop University is only authorized by the Budget and Control Board to award contracts for information technology with a total potential value up to \$200,000. With amendments valued at \$9,000,000, Winthrop grossly exceeded its procurement authorization. These factors would indicate that the amendment signed by Winthrop is in violation of the State Consolidated Procurement Code.

In addition, I received the following communication from Robert Reid, Procurement Director at Winthrop University on February 22, 2008:

"The University assembled a committee that determined SunGuard as the best option for our administrative software needs. Since the pending COC procurement to SunGuard has provisions to add other agencies such as Winthrop, we request permission to evaluate and review the COC RFP results to explore that option. As for the amendment (win001), please note the provisions (1 through 17) to amend and or terminate with notice. Hopefully we can compare the two documents and negotiate the best procurement for the University as allowed by the code."

At the time of receipt of this communication, the apparent successful vendor for the College of Charleston's contract was unknown. This information was not available until May 19, 2008. Winthrop appeared to be making an assumption that SunGuard would be the successful bidder for the College of Charleston's contract. While there were provisions in the College of Charleston procurement that might allow other agencies to participate in the resulting contract, there was also the potential for negotiation of agency specific provisions that would prohibit the use of this contract by other agencies.

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Winthrop's contract amendment was in violation of state procurement law and subsequent reliance on termination clauses in the illegal contract to absolve the University of any wrong-doing is inconsistent with the way the State conducts business under the law. It appears that Winthrop decided on the SunGuard Banner product and embarked on a course of action to circumvent the competitive requirements of the South Carolina Consolidated Procurement Code and was trying to rationalize its actions.

There also appears to be a lack of understanding of the basic principles of contracting as evidenced by the following communication also from the Procurement Director at Winthrop:

"Attached is a tentative agreement to purchase (administrative software system) from SunGuard Higher Education. As per our recent communication, Winthrop has not entered a purchase order to complete this procurement. Our intent is to finalize within the procurement code after comparison of this agreement and the pending solicitations taking place now with the Charleston schools. Once all data and information is available, we intend to evaluate and negotiate the best opportunity for the University."

The "tentative" agreement was already signed by both SunGuard and Winthrop. There is nothing "tentative" about it. Were it not for the fact that this contract is illegal, Winthrop would be bound by this contract regardless of the issuance of a purchase order. A purchase order is only a payment vehicle. In the absence of an authorization to use one of the contracts awarded by the Charleston schools, there is no way to finalize this contract within the procurement code.

On April 22, 2008, Winthrop signed a sole source justification for the Banner product. Declaring a sole source after signing the contract presents a number of problems. First, while Winthrop's justification makes reference to recommendations made by various committees in 2002 and 2006, a sole source determination must be made in writing prior to executing the procurement. The second problem is that the justification, while listing some nice features, does not adequately explain why Banner is the only product that can meet the University's needs. Declaring Banner a sole source is also problematic since the University of South Carolina issued a competitive procurement for its ERP and Lander University, College of Charleston, and the Citadel conducted competitive procurements for replacement of the Plus product. As a result of this action, Winthrop University's authority to conduct sole source procurements is at risk.

Finally, on June 6, 2008, I was informed that Winthrop University is in the process of implementing the Banner product.

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These practices indicate a lack of knowledge and training with regard to the South Carolina Consolidated Procurement Code, Budget and Control Board Procurement Regulations, the acquisition of information technology, and the basic principles of contracting. It appears that Winthrop University decided to acquire the Banner product and violated a number of statutes in an attempt to avoid the competitive procurement process prescribed by law. These actions are all the more troubling because the Procurement Director at Winthrop University has many years of experience and knowledge of the procurement code.

With this letter and in accordance with B&CB Regulation 19-445.2022 I am reducing Winthrop University's authority to conduct information technology procurements to those with a total potential value less than \$25,000 until such time as I am assured that the proper internal controls are in place to insure compliance with the procurement laws, Winthrop's procurement staff has received additional procurement training, and the Audit and Certification team has completed a satisfactory audit.

I am available at your convenience to discuss these issues and how best to restore Winthrop University's procurement authority.

Respectfully,



Michael B. Spicer
Chief Procurement Officer
Information Technology Management Office
Division of State Information Technology
South Carolina Budget and Control Board

c: Mr. J.P. McKee, Winthrop Vice-President for Finance and Business
Mr. Eddie Gunn, Chief of Staff, Budget and Control Board