

COTS Webinar Transcript

Presenter: Kimber Craig

Date: 8/11/2023

0:00 Thank you for joining this morning. Good morning everyone, I'm Kimber Craig and I'm the Deputy Chief Procurement Officer for the Division of Procurement Services for the State Fiscal Accountability Authority, and welcome to our webinar on commercial off the shelf procurements or COTS.

0:17 There was definitely a lot of interest in this topic, and this is a topic that a lot of people have asked for more information on and have questions on, so we wanted to put this together for everyone.

0:27 We did ask for people to send questions and feedback in advance to help us prepare for this, and I want to thank everybody for all the questions. We got quite a bit of feedback and that helped us to kind of tailor this a little bit.

0:41 So hopefully I will have answered all the questions within the presentation, but if there are any questions that, as we go through, you don't have the answer to please feel free to type them in the chat and we will make sure that we address those at the end before we wrap up. And we will go through our session. So we'll go ahead and get started.

1:05 So the first thing I want to talk about is and the biggest question (why is my...not advancing...there we go) so the biggest question is what is it? What's the state definition? What do you mean by COTS? What do I do? Why do I care?

1:22 So in 2019 when Procurement Code updates were made and the Regulations followed in 2022 that was when COTS was introduced into the into the Procurement Code.

1:38 So when we did these changes back in 2019 the goal of most of the changes that were made were made with the intention to increase efficiency, give procurement officers more flexibility in meeting our customer needs, and making things easier for folks at the agency to get things that... get goods and services for their agency that they needed to streamline the process, so that things could be done quickly and more efficiently.

2:07 So one of those things that we did was we introduced COTS, or commercially available products.

2:13 And so what COTS is in general, in relation to Procurement Code, is these are the category of products that can be acquired at higher dollar levels with more simplified acquisition procedures so that there's less burdensome rules and terms from the government when you purchase these items.

2:34 And we use COTS to identify a category of products that were that we can use these procedures that were more simple, because these are products that have a wide availability, which means that we do have competition.

2:47 There's a wide availability of pricing information, so that we know that the prices that we're receiving are good prices or valid prices.

2:56 The terms and conditions that the industry offers these types of products on our fairly standard. The practices of how they do these with delivery is all very standard. There's not a lot of differentiation between the terms and conditions of the products and the practices.

3:16 With the COTS procurements award is made on a low bid basis, so low price wins. So there's not a lot of opportunity for collusion or any kind of nefarious actions.



3:31 It does require...still require competition, but the competition is a little bit more streamlined through quotes and it's not the formal solicitation process with the documents with lots of terms and conditions, and has to be advertised, and evaluation processes.

3:50 The goal is to be a lot more streamlined and straightforward.

3:54 So what we did was we introduced the concept of COTS, and then we added in the small purchase procedures which is section 11-35-1550, was where we included the purchase procedures for COTS.

4:07 So in general as part of our efforts to increase efficiency, the small purchase thresholds were all raised.

4:16 So the 3 quote threshold was raised to \$10,000 to \$25,000. And then we also added the ability to use 3 written quotes to purchase COTS and small construction up to \$100,000.

4:33 So again what this does, it eliminates the need for more for formal solicitation for this category. And what the goal is to have lower transaction costs both for the government to issue the procurements and award the procurements and for business to respond.

4:50 Hopefully, that lower transaction cost will increase competition, lower some prices, and speed the process for purchasing COTS.

5:00 So along with allowing these COTS products to be done during 3...to be purchased using 3 written quotes, there were some other factors that we had to consider to help streamline the process.

5:16 So there are a couple of code sections where we've done that.

5:21 So first off, we added section 11-35-2040. So this is the inapplicable laws section where it identifies certain provisions that are government only rules that apply to our government procurement. And what we've done is made these rules not apply to the procurement of COTS.

5:43. So these are things like the illegal immigration clause, or the illegal immigration statute which is in chapter 14 title 8 of the South Carolina code, section 11-9-105 which relates to legal consultant services, the open trade act which is in 11-35-5300, the drug free workplace act which is Chapter 7 title 44.

6:09 It also allows us to add other provisions of law that we can exclude by regulation. Currently we don't have any.

6:18 So what this is, is these are provisions that sometimes are hard to enforce, especially on lower dollar procurement. So I know people often have struggled getting the open trade certification or the drug free workplace act certification signed or illegal immigration.

6:33 So by eliminating these to COTS procurements, we have kind of lowered that bar for the local business to be able to do business with us, reduce that complexity and makes it easier for us to perceive offers from this for these products.

6:52 So the second section...the second section was 11-35-2050. This is unenforceable contract terms.

7:01 So when we're doing COTS procurements, we're relying on the standard terms and conditions that business use...that businesses use when selling these products.



7:10 So there are 2 things that are in most standard terms and conditions which are problematic. So if you've ever reviewed vendors standard terms, you know that there's gonna be a choice of law clause in their documents which is not gonna match ours: it's gonna be Delaware or gonna be Texas or gonna be California, and it's not South Carolina law.

7:30 So this Code section says if a contract is awarded by the state South Carolina or anybody subject to this Code, it is going to be governed by South Carolina law. And that if any term is any vendor agreement, or anything that's signed to the contrary, that's gonna be void and doesn't apply.

7:50 The other provision that typically is in these contracts is indemnification. So this section will say that if there's any clause that requires the state to indemnify, defend, or hold harmless, those causes are also going. So they are as if they don't exist, and are unenforceable.

8:11 So that will allow us to use those standard terms that are offered by the vendors, but void the ones that are truly the most problematic to us.

8:23 And there's also a Regulation that allows us to add any unenforceable contract terms if we need to. It also states that if there is any clause in a vendor's contract that is contrary to law does not apply either.

8:39 So the last section that you really need to be aware of is section 11-35-4210. This is our protest clause.

8:47 So this is the one that doesn't necessarily help streamline the process. The process is more streamlined, but it is still subject to protest if it's over \$50,000. So although you can use 3 written quotes to purchase up to \$100k, the protest threshold does remain at \$50,000.

9:05 So if you're doing a COTS procurement over 50 and under 100, when you award those you will need to send a statement of award to the vendors who submitted quotes and include a statement regarding their right to protest.

9:19 So you can use the same standard statement of award form that we use for other procurements - for more formal procurements - but you will need to do that for the three written quotes.

9:30 There is not a intent period, or a stay of that procurement. So you can go ahead and issue your PO proceed with procurement, but you do need to provide a notice of award.

9:43 So those are the code sections that apply, and as I said probably the biggest question we got is what is COTS? What's the definition? I need more guidance.

9:53 So what we're going to go through, is we're gonna go through step by step of the definitions that are in the procurement code for what is COTS - go through some examples, and hopefully that will clarify what covers as COTS and what doesn't.

10:10 So, section 11-35-1410 is where we talk about COTS and the definitions in the Code. There's also a regulation related to COTS which is 19-445.2141.

10:26 But we're gonna go through the definition in the Code and talk about what that is and see how that applies.



10:33 So in the Code we talk about the definition states they're commercially available products, or commercially available off the shelf products are supplies, other than printing, and information resources that are sold in substantial quantities in the commercial marketplace and offered to the state without modification in the same format as sold in the marketplace.

10:54 This does not include products sold in bulk, agricultural, petroleum products.

11:01 So we'll go through kind of what that means so we're going to start with the first piece which it has to be a supply other than printing or information resources.

11:11 So in our definition section of the code which is 11-35-310, supplies are defined as personal property including but not limited to equipment materials and insurance.

11:25 So the definition of COTS in 1410 excludes printing, and regulation 19-445.2141 excludes insurance. So you take out printing. You take out insurance. You're left with equipment and materials as COTS.

11:45 So services are a different definition in 310, and services are not included in the definition of COTS so therefore services are not COTS. It has to be an equipment or material to qualify as COTS.

12:01 The next piece that we talk about is information resources, and this is the one that's a little more of a gray area or fuzzy area for people.

12:11 So again we have a definition in 11-35-310 of information resources. And so it includes, in that definition, includes computers, ancillary equipment, peripheral equipment, databases, software, firmware, middleware, application development software, routine maintenance and support, and software is included as to whether it is owned, leased, licensed, or accessed as a service.

12:37 So what that boils down to is that it is hardware or it is software it is included. It also includes routine maintenance and support.

12:49 What is not included is Information Services, which is a separate definition in section 310. And so those are your people services related to information technology.

13:03 So if you have someone come in and fix your computers, or repair a system, or develop software for you - that's Information Services and would not be included in COTS.

13:19 So within information resources, software as a service, or SaaS, is probably the biggest question about how do you do SaaS as a COTS?

13:32 So because software is included in the definition of information resources and it does not...it includes software that's delivered as a service, SaaS may be considered a COTS.

13:43 So we haven't gone through the full definition of COTS yet, this is just the first hurdle. So the first hurdle, SaaS is considered COTS, as long as it meets the other definitions and other requirements that we'll talk about in just a few minutes.

14:00 But SaaS products are COTS and can be used...purchase using the simplified procurement method.

14:08 So one of the things that affect SaaS agreements are GASB 96 requirements. So if you're not familiar with that, GASB is the Government Accounting Standards Board and they have come out with



standards for the accounting and financial reporting on subscription based information technology agreements or SBITA.

14:28 This is similar to GASB 87, if you're familiar with that. That applied to leases and rental agreements that came out a few years ago. It came out before GASB 96, but this is essentially very similar to that and relates to information technology agreements.

14:42 So GASB 96 requirements, because they're finance, they're going to apply regardless of how you procure it. So it doesn't matter if you get a subscription based agreement through the COTS purchases with small purchases through quotes, or whether you do a formal solicitation process, the GASB 96 requirements will apply.

15:05 So your finance department should treat a COTS procurement of SaaS, the same way they do many other procurement.

15:14 Now, in GASB 96, there are exceptions for short term SBITAs, which are considered under 12 months including the renewal terms.

15:23 So when we're doing a COTS procurement using written quotes, we're using the contractor's standard terms and conditions, which would include that term of the agreement.

15:36 Renewal terms are all included in that agreement, so you need to be aware of what those standard terms are to know whether it would fall under the short term exception or not.

15:47 So what you'll need to do is get that agreement, work with your finance department to determine do I need to use the GASB 96 requirements or does it fall under the exception?

16:00 Because that will...it may change for depending on what you're buying, because depending on the cost it might be a short term under 12 months, it might be one that you can get under 100,000 for longer than 12 months.

16:17 So you'll need to investigate that and work with your finance department on case by case basis.

16:22 The next question that we were asked was what happens if the service expands?

16:27 So when we do software as a service, we're typically looking at SaaS is priced on a per-subscription basis. so I need 5 subscriptions or 500 or 10, whatever the number is.

16:40 And so when I get my quotes, I've gotten quotes for a certain number of subscriptions. If I need to add additional subscriptions, that's gonna be a separate procurement.

16:53 Now, if I've added them in the middle of the year- so now I want to combine everything on a new - you know, I started out with 100 licenses and I wanted to add 25. At some point I'm going to end up bringing all those together and buy 125. So again that's going to be a separate procurement as well.

17:15 So when you do the 125, you need to look to see is the price still under \$100,000? Or is it going to be over \$100,000, that I then need to do a more formal solicitation process to get?

17:31 So if i'm in the middle of it need to add some, I can add. But at some point I'm going to merge all those together and that's going to be a standalone process: either redo the quote, or do a more formal solicitation process.



17:48 What you want to do is really considered the term. Am I gonna need these products for a year, or 2 years, or 3 years?

18:00 I would not recommend just doing 12 months, if I know I'm going to get for a longer period of time, doing 12 months just to keep it under that threshold for 3 quotes - maybe go ahead and do a longer term agreement, so that with a more formal process, that's gonna reduce my cost for issuing the procurement because of not having to do it every year.

18:22 I would probably get some better pricing if I have a commitment for a longer period of time.

18:26 So what you want to do is, when you do your market research, look at what does the market offer? Do they typically do it in longer period of time? Am I gonna...is my need gonna last longer? And make that determination of yes it's SaaS and can be considered COTS, but do I want to do this as a COTS, or do I want to do something longer term?

18:47 I've seen it done...I've seen some agencies do one year, if it's just for a couple years. I have seen people go ahead and do the more formal procurement. So that's really gonna be an agency decision.

19:01 Okay, so that covers the first section.

19:04 So we kind of have a little Venn diagram here with COTS. Either you can be COTS or you're not COTS, depending on the type of thing you're buying.

19:11 So if you're information resources, supplies you are inside the COTS circle. If you are insurance, printing, information services, or standard services you're out.

19:25 So once I've made that determination, now I need to go back to my definition and see the other items to see if it's still COTS.

19:35 So the next requirement is, it has to be a commercial product. So what does commercial product mean?

19:45 So here is what the definition is in 1410, and yes I've got a requirement in definition 1 and definition 2, they're kind of a little bit of order, but that's OK.

19:58 So a commercial product is supplies, other than printing, or information resources. We've already covered that. That's checked.

20:08 There's 3 more things that we have in the commercial products definition: has to be used, sold, leased, or licensed to the general public, there's limited modification, and it could be a combination of products that are available.

20:22 So what are those things mean? First, there's the public market or the general public. So what does that mean?

20:30 The general public is anybody that's not government. So if you are not a governmental entity, and I'm buying something for non-governmental purposes, that is available to the public market.

20:44 So, an example of that is: anybody can go by a Ford Explorer, so a Ford Explorer's a commercial product.



20:51 Ford also makes a police version of the Ford Explorer called the Ford Police Interceptor Utility Vehicle – a very fancy name. Only police departments or governmental bodies can buy the Interceptor.

21:06 So an Explorer is a COTS. The same vehicle made specifically for government use as a police vehicle, the Interceptor, is not.

21:17 So similar items - it's pretty close - one's available to the general public, one it's not. That's going to be a differentiator.

21:24 The next requirement, or the hurdle you have to do, is about modifications. So you can have limited modifications, and modifications can come in 2 forms.

21:35 The first ones customary modifications that are standard options anybody can buy for the general public. A minor modification is a modification that that needs to be made that's allowable for government use.

21:48 So when we talk about that, some examples - if I'm still doing a vehicle I'm looking at my Ford Explorer, a customary modification would be I'm gonna get heated seats or a sunroof, or I'm gonna buy a towing package. Those are standard modifications, standard options, anybody can get those, general public. That's allowable.

22:11 A minor modification for government use is if I'm going to use this Ford explorer for DOT as a work truck I'm going to want to have a light bar on it with some flashing yellow lights, so when I pulled off on the side of the road helping somebody who's run out of gas or has a flat tire they can see my truck and not run into the back of me.

22:30 So that's a minor modification for government use. You cannot completely modify the vehicle - give it like tiger teeth on the front of this Mini Cooper in the picture - that's modifications that go above and beyond minor modifications.

22:46 So it's got to be something that's either standard option everybody can use or something that's fairly minor that makes it suitable for government to use.

22:55 The last hurdle in the commercial product section is combination of COTS products available to the general public. So if I have a kit that's made-up of all commercial products: it's a toolkit. It's a first aid kit, that has band aids and Neosporin and burn cream and gauze and cotton balls: all those things are commercial products. I packaged them together and sell them. Those are also all commercial products.

23:28 So then the last threshold in COTS is it's sold in substantial quantities in the marketplace and is offered to be stayed without modifications the same form. Well, we talked about modifications and the definition of commercial products, so really the last piece in here is about the substantial quantities in the commercial marketplace.

23:48 So that means, substantial quantities equates to widely available. So, for example, I can buy their retail location. There's multiple sources that I can buy it to, whether they're a physical store, or whether it is I can order it online. I can have it shipped to me.

24:11 And the reason that we want it to be able to be sold in substantial quantities or being widely available is, having products available widely is kind of an indicator, or it lets us know there's



competition. So we can get competition from multiple sources. It gives us some availability of pricing information, so again we know that we're paying good prices. And that we know that there's a standard.

24:36 So if I buy a product from Walmart, one from Target, or I ordered online from Amazon, the terms that the vendors are offering me and the condition the warranty is going to be the same. Delivery should be fairly consistent. If it's if it's mail order if I'm picking it up. So it's really going to be consistent on what I'm buying and the terms I'm buying it under.

25:05 The last thing is, it's not a threshold so much, it's COTS doesn't include. So the definition says it can't be an agricultural product, so I can't buy wheat or corn or vegetables through COTS.

25:26 They can't be petroleum products, so I can't buy oil or fuel or things like that. And these are items a lot of times are also sold in bulk. So if I have to buy it by the truckload or the train load, those are not considered COTS.

25:40 Typically, with a trainload I don't know how much I'm getting. So depending on who's loading that train car or that bulk shipment, they might have it filled all the way to the top, they might have it filled 98% full. So there's not there's not as much consistency in those products, so we have excluded those from the COTS definition.

26:08 So that's kind of how we go through and determine what's COTS. We're gonna talk about some examples.

26:16 I mean you could use a general rule of thumb: if you can find it in the store, you can buy it online, it's probably gonna be considered COTS.

26:25 A lot of things that are COTS, that fall into that statute, are already on state term contract. So if we have it on state term contract, you would need to use the contract to purchase that. But anything that falls in these definitions that's not on that contract you can purchase through some of these simplified procedures.

26:44 so we're gonna go through some, a list of items, and we're gonna see do these qualify as COTS or not?

26:55 I'm gonna go through some of these. I don't know if I can see because I'm sharing my screen, but if you want to give a thumbs up if you think it's a COTS, or I don't know if there's a thumbs down icon. But we'll go through these one by one and we'll see if we think these are COTS or not.

27:10 So the first one is band uniforms. First of all somebody give me a thumbs up and see if I can see it. OK I don't see it so...

27:23 Kristi **breaking in**: Kimber, if you look at the participants, like click on the participants thing and pull it to your other screen you can see how many thumbs up and thumbs downs you get.

27:33 Kimber **resuming** Well there we go. So now I can see it, so that's great. I'll do it that way. Perfect.

27:39 Alright so the first one is band uniforms. Is there anybody who thinks there's a thumbs up? Okay, I see people have given me the examples. so let's kind of go through requirements.



27:52 So is a band uniform a supply or an information resources? It would be a supply. Is it sold to the general public? Can people who are not government buy band uniforms? Sure there's private schools, private colleges, that buy band uniforms. And I guess if I wanted to go buy one I could. Not sure why, but I might. So it is sold to the general public.

28:21 The next threshold will be the modifications. Are there limited modifications for band uniforms? Really there's not. A band uniform is gonna be custom made for that specific band.

28:34 So I'm going to have a certain color I'm going to have a certain design. So because I don't have limited modifications - there's a lot of modifications to go into band uniform - it is not considered a COTS, so we would take that off the list.

28:54 Alright so then the next requirement, the next item on the list we talk about is lock sets. Gonna give it thumbs if anybody thinks a lock set is a COTS. So I'm getting the lock and the key and replacement.

29:10 Getting lots of thumbs up. Yes, lock sets would be considered a COTS. They are considered a supply. They're sold to the general public. Anybody can go buy a new lock set and change it out. There's limited modifications. The lock is a lock. And they are widely available, so yes lock sets are a COTS product.

29:31 Boots. I'm getting to that question Dean, I knew you were coming! Dean asked about if there were several brands of locks and a brand justification. We'll talk about brand justifications in just a second because that is a that was a question that was asked.

29:47 Boots. Anybody thinks boots is a COTS? Getting some thumbs up. Oh, and there's a thumbs down icon. That's great!

29:58 So let's talk about boots for a second. Boots: is it a supply or an information resources? Yes, boots are a supply, so we can cross that hurdle. Are they sold to the general public? Yes, pretty much anybody can buy boots.

30:13 Now, maybe there's a specialty boot, but I'm just talking general work boots. Yes, those are sold to the general public.

30:21 Limited modifications? As long as we haven't bedazzled the boots or, you know, put some really technical specific modifications usually these are going to have a limited modification.

30:37 Are they widely available? Yes you can pretty much buy boots anywhere you want to. So as long as you don't have custom made cowboy boots, custom made cowboy boots would not be a COTS. Regular general work, steel toe boots they are considered a COTS. So for our purposes today, boots are a COTS.

30:59 Next one is building power washing. Can I get a thumbs up or thumbs down on building power washes. Is it a COTS or not? I got a lot of no's. Yeah, so building power washing is a service, so right off the bat it is not a supply or information resources. So it is not a COTS, so we will take that one off the list and we will keep moving.

31:29 I think that's pretty much it kind of gives you an idea of what we're doing.

31:32 Polo shirts with the agency logo, are those COTS are not COTS?



31:42 Getting some things up. Yes polo shirts with an agency logo, that is a supply with a minor modification. Anybody can buy it. that would be considered a COTS.

31:52 Charter bus transportation? COTS or not COTS?

32:01 Got a thumbs down. People services. Yes, so a charter bus, if I'm just saying, "hey can you bring your bus, pick up my people at the agency and take them here, or take my students here," that's a service. If I am buying the bus itself, I might have a COTS, but the transportation services in the service and would not be included.

32:25 Promotional items. If I wanna give out stress balls or pins with my agency logo would those be considered COTS?

32:34 Yup. Thumbs up. Got those. Everybody is good on promotional items. Those are a COTS.

32:41 Billboard? Is a billboard a COTS?

32:49 Oop, Shannon's laughing, I don't know... thumbs down, thumbs down, thumbs down. Yes billboards...when I'm doing the Billboard, I'm renting a billboard for a month or 2 months or 6 months to advertise. That would be considered a service.

33:06 Okay, so the next one the remote access virtual private network (VPN) solution and SaaS? Is this considered a COTS?

33:22 I got a thumbs up. I got a thumbs down.

33:26 So this one, is it information resources? Yes, a VPN Solution and SaaS. Maybe? Yep, that's a good answer. It's always maybe is the best answer you can give.

33:38 A VPN solutions and SaaS is information resources, so it qualifies as long as it's a standard VPN solution. So Duo is standard. Whenever I buy Duo, somebody else may buy Duo, and that is sold to the general public.

33:56 Limited modifications. Typically, a standard is going to be limited. It may have some customizations but typically the SaaS is the SaaS.

34:06 Widely available. That's the question. Is it widely available, or is it only available from one company? So what you want to look at is, is this SaaS the product of something that that you can get a lot of different places or through different dealers or resellers?

34:22 So for our purposes we're gonna assume this is a very basic VPN, very basic SaaS. It is considered a COTS, but there is potential for it not to be, so that's a good one.

34:37 Building signage? Is building signage a COTS?

34:44 I've got a thumbs up. I've got a lot of people thinking. I got some thumbs down. Some thumbs up.

34:55 So yeah, La Tasha gone with the it depends answer. It depends.

35:01 So if I'm talking I just want an exit sign or I want a, you know, for sale sign that I can go buy in the store that is, that would be a COTS.



35:13 But if I'm looking at building signage, typically I'm going to want a certain size, a certain color, a certain font to be used. I'm gonna have to customize it with maybe the agency logo, with the agency name, with the different department names.

35:31 So if I have built a new building and I wanna go put all my signs and my directional signs, that probably is going to be customized and less, fewer limited modifications. So in this case, for what we're going to use, that is not a COTS.

35:49 Uniform rental service? I'm going to have someone come in, measure all my employees, provide us uniforms. They're going to pick them up and wash them and bring them back.

36:01 Lots of thumbs down. Yes, that is a service, so it is not a COTS.

36:06 a 3D printer, is that going to be a COTS?

36:14 Getting thumbs up on that one. Thumbs up and thumbs down. Hey, you gotta cover all your bases.

36:19 Yes, a 3D printer, those are information resources. They are widely available. They would be considered a COTS product.

36:30 15 years ago when 3D printers weren't very widely available, maybe it wouldn't have been but it is today.

36:35 Pest control services? Oops, I just gave the answer. What about pest control? Yeah, thumbs down. That's a service. That doesn't include.

36:46 Musical instruments? Would that be a COTS?

36:54 Getting some thumbs up. Yeah, so a musical instrument, as long as it's not a custom-built music instrument, is gonna be considered a COTS.

37:02 Security cameras, are those COTS?

37:09 Yup, thumbs up. They are they would be considered a piece of equipment that does qualify.

37:16 Website development, is that a COTS? Yeah, thumbs down. Those are services, not a COTS.

37:27 Digital radiography equipment, is that going to be a COTS? Got a thumbs up and thumbs down.

37:38 Yeah, yeah typically that's going to be a COTS. So most of the radiography equipment is pretty standard across the board. Government and non-government people can use it, so you can buy it from a doctor's office or a hospital.

37:54 We have used these for our tech schools to help train people. So usually that radiography equipment is standard and can be considered COTS.

38:04 There are several pieces places that you can buy that. It's not as widely available, maybe, as a promotional item but it is, for the purposes of here, while available.

38:15 an X-ray manikin. Would that be a COTS?



38:19 So this is...an X-ray manikin is used by our technical colleges to train people on how to use X-rays because we don't want human subjects to be the...to get all those X-rays and exposed to that radiation.

38:33 So yes, an X-ray manikin is considered a COTS, because they are standard with the bones and internal organs that that they use to test and run those. So these are considered a COTS. There are several companies that buy those. Now, they are branded and we'll talk about brand names in just a minute.

38:54 Temporary HVAC equipment rental would that be a COTS?

39:07 People are thinking.

39:09 I got some thumbs up. I got some thumbs down.

39:12 Yes, if I'm renting it, it is a service. If I am purchasing the temporary HVAC equipment, it would be a COTS. But if I'm just renting it for a few weeks or a few months, it is a service and would not be covered.

39:30 So the last one is light fixtures. Are light fixtures a COTS product?

39:39 Yes, getting thumbs up. So a light fixture is a COTS product, unless I am getting um, someone like the city of Columbia had an artist do a blown glass sculpture for the Convention Center. That would not be COTS, that's custom. But standard lights that go up in your office would be considered a COTS.

40:02 So, good job. Everybody kind of got those right. We went through those, and of the list we started with, we are left with just a few offices that are, or a few items that would be considered COTS.

40:16 Alright. So now that we've kind of got a good idea of what is COTS and what isn't, and I know that I'm gonna purchase less than 100,000, how do I do that? So we're gonna look here.

40:33 So, we use section 11-35-1550, paragraph 2b. I'm gonna do 3 written quotes.

40:40 So what that means is I have to have a written request for 3 quotes. And I can either e-mail those the written requests directly to 3 vendors, I can send it to 5 vendors, I can send it to however. And I can just solicit it directly.

40:59 The request has to be in writing and it has to include a purchase description.

41:06 Request must be distributed equitably among qualified suppliers. So if I know that I'm trying to solicit vendors for this and I'm purchasing a light fixture that's a COTS and I send it to somebody who sells lock sets, or sells boots, well that's not a qualified supplier.

41:32 So I wanna make sure that when I send those out to people that they are vendors who can supply the product and vendors who have the ability to perform and are responsible. So we need to distribute those equally.

41:47 I do have to have 3 bonafide responsive and responsible quotes. I would document those quotes, attach them to the requisition, award it, and attach it to the purchase order.



42:03 Again just like in the standard for 3 written quotes, if I have sent this out I haven't gotten 3 quotes I can advertise in SCBO. It's not required, but it is an option. So if I think I'm having difficulties getting the 3 quotes I can advertise that with adequate public notice.

42:23 So there is no minimum number of days to put it in SCBO. What you would want to do is, when you're when you're advertising something in SCBO, and this is regardless whether it's the 3 quotes, whether it's the solicitation, any SCBO advertisement, you want to make sure that it out there long enough for vendors to see it, read the purchase description, understand it, put together a price, and get it back to you.

42:52 Now with cots they're standard products with pretty much standard pricing, standard terms. They should be able to turn that around fairly quickly. Where, if this was a formal solicitation or an RFP, they're gonna have to do a lot more work on the vendor side to put together that pricing for you.

43:10 So if the agency determined, "hey I'm putting this out on a Monday. I've emailed it to several people already. I'm gonna put it out there and leave it out there for 5 days."

43:22 Or "I think this is a little more complex. It's still COTS, but maybe there's a little more effort that they need to do. I'm gonna leave it out for 7 days."

43:31 Or "I'm putting this out on the Monday before Thanksgiving, so I'm going to leave it out for 2 weeks because nobody's probably going to see it for the first week."

43:41 So depending on what it is, when you put it out will determine how long you need to leave out there. So you just need to make sure it's advertised for adequate public notice.

43:52 If I put it out on Wednesday afternoon before Thanksgiving and prices are due the Monday morning after Thanksgiving, that is probably not going to be considered adequate public notice. So you want to...that could change. It can vary, so you need to use your judgment.

44:10 Another question that came up when I'm doing the 3 written quotes was preferences. So per section 11-35-1524 paragraph E5, that is the preference statute, preferences do not apply to the procurement of COTS.

44:28 So if you're using 3 written quotes to buy COTS, you do not use preferences in that. Now, if you are doing a solicitation of COTS, then preferences would apply. So it's not that it doesn't apply to COTS. It doesn't apply to the use of 3 written quotes.

44:47 Then the last thing that we need to have, we talk about with the 3 written quotes is the protest statute. Not the protest statue, sorry, the certification of the agency.

44:58 So standard agency certification in the Code is \$50,000. You can use 3 written quotes to purchase up to 100,000. So if you are an agency that is only a non-certified agency, or certified for less than \$100,000, you can still use COTS 3 quotes to buy it to that threshold, you just need to get additional approval from our office in order to do that.

45:25 So what you would do is, if you're non-certified agency, go ahead and prepare your written request. Go ahead and get your 3 written quotes.



45:35 Then what you need to do is you need to e-mail the written request that you sent out to the vendors and the quotes that you received to your Agency Sourcing Team Lead at SFAA for your agency.

45:47 So if you are a you are a law enforcement agency or higher education agency, you would e-mail those to Sheila Willis.

45:59 If you are a human services agency or DOT or DMV, kind of the agencies are not law enforcement or higher ed, those are emailed to Zach Yarbrough.

46:13 If you are doing a COTS purchase of information resources or IT, that goes to our IT team lead. We are interviewing for that position now, so we don't have a person on that. So until the IT team lead is named, just send them to the team lead for your agency and they'll take care of making sure somebody gets those reviewed.

46:35 We'll review those. We will email you approval to proceed. And once you get that approval to proceed, you just keep that email with your purchase order for documentation that you received for approval from our office to do that.

46:53 OK. The next question, this is one of the biggest ones, is how do I do my written request for written quotes?

47:00 So in the purchase request that you send to your vendors, what our regulation says is that it should include a purchase description with sufficient detail for potential offers of commercial products or COTS to know which products may be suitable.

47:19 So ideally you're gonna give them just a description of what you need. It can be the type of product that you need to acquire: I need to acquire...I need a light fixture. I need a lock set.

47:34 Explain how you intend to use the use this in in your agency. So I need a lock set to lock office doors in an office building.

47:43 The function to be performed. The performance requirement. I need it to open with a key, or I need it to be a key punch lock. Any physical characteristics. Any combination of those things. So describe what you need.

47:59 Now, most COTS tend to have a brand or a brand name. So this would apply to any specification for any procurement, regardless whether it's COTS or whether it's a solicitation or just a 3 written quotes for something that's not COTS.

48:18 The specification should not be unduly restrictive. So we talk about brand name or equal. We have brand name or equal and we have brand name.

48: 27 So if you want to use a brand name spec, because you want them...you want vendors to understand, "hey I'm looking for a lock set that is like, you know, a Safe Lock model 2782." That will tell them this is kind of the type of lock I'm looking for.

48:49 If you're using a brand name or equal then you would need to say, "I need, you know, the 2782 lock and it needs to have a key with a dead bolt, and it needs to be a certain size. I'll take any the other brand other than the lock set, but here's the things I'm gonna be looking for."



49:11 And then what you would do is when those offers came in at the vendor gives you something other than the brand that was listed in the solicitation, you need to evaluate and award based on this is what that brand is.

49:26 There may be a reason that you need a specific brand, and you will reject offers that aren't that brand. Now the question becomes is specifying a certain brand unduly restrictive? If the brand requirement is not unduly restrictive, you need to have a brand name justification for why it should be that brand.

49:55 It really comes down to: this is, you know, I have to have a Lock Set brand because I already have the Lock Set brand. I have a master key. I don't want multiple master keys. They're not compatible.

50:15 You know, you've got to be able to justify why you have to have that brand name. Because what will happen is, a lot of times when you send things to vendors they can sell multiple brands.

50:24 So if they're gonna...they'll say, "hey I can sell you the brand you've asked for A, but I could also give you this other brand for B." You need to have a brand name justification if you're going to reject that alternate brand.

50:43 So that, I hope that answers that question. But it is it's not necessarily that COTS requires a brand name. It is, if I'm only going to accept a brand and I've got a justification as to why, I need to include that when I do my written quotes.

51:00 if it is the brand name is only for, "here's my standard I will take something other than this brand," you can use the brand name or equal. Just make sure you have your salient characteristics and you have evaluated the bids that come in to make sure they meet or don't meet.

51:20 So an example, I've talked about the lock set. Another example might be T-shirts. If I'm asking for Hanes 50/50, and I'm only going to take Hanes 50/50, then I need to have a brand name justification. If I'm like, "hey I want a 50/50 T-shirt that's kind of like a Hanes," and they give me, you know, a Columbia T-shirt that's a 50/50 then that's fine.

51:45 *Kristi breaks in* Question in the chat from La Tasha is would it be the same for sole source? Does that need a brand name justification.

51:52 *Kimber answers* Yeah, I mean the brand name justification is for any time you're gonna do a specification that it has to be a specific brand name, whether it is a sole source, whether it's COTS, whether it is a solicitation, you will need a brand name justification if you will only accept that brand.

52:11 So the brand name justification isn't because it's COTS, it's just any specification in general.

52:26 Then the last thing on the written request for quotes is we have some questions about what terms do I use for COTS? So we really don't have any specific contract terms for COTS, strictly because the purpose of COTS is we're gonna accept the vendor standard terms and we want to use the customary terms and conditions for that product.

52:47 You should know or be aware of what's in those agreements for those products. So, you know what's the typical warranty? What's the typical, you know, term of the contract if it's a SaaS. How long am I gonna have it?



53:02 So you don't necessarily need to have specific contract terms in those written requests. Now you may want to have some. You know, we don't have to do the workplace...the drug free workplace. We don't need to use the illegal immigration that we typically put in our written request for quotes or small purchases.

53:22 You may want to go ahead and supplement in your written request that says "hey there is, you know, we've got the statute that says it's going to be governed by South Carolina law," and cite the statute.

53:35 You may want to cite the statute that says, you know, the no indemnification, just so that the vendors are aware of that. But we do not have any specific terms.

53:38 If you wanna include them, you can, but really for COTS our goal is we do not want to include a large number of burdensome or contradictory terms in those that would cause problems in getting the getting the problem getting a quote from a vendor.

54:07 Looks like I have another question in chat, "so SaaS to be purchased this brand name or equal with the salient characteristics listed for the equal?"

54:15 Yes, absolutely. Brand name or equal is if an equal product would have these 5 features. I can evaluate those features and then accept the alternate brand if that's there.

54:30 Yes, we can send out this presentation. Or I'll give it to Kristi. I don't know what her plan is for that, about sending out the presentation.

54:41 Any questions on the contract terms for COTS?

54:51 Alright, I think that covered all of the questions that we got in advance. So there any other questions about COTS in general that I have not already covered, because we are coming up on the end of our hour?

55:15 I'm not seeing... I know this is a project, a concept that is new and we've had some presentations, and we've tried to revamp a little. But I think the feedback that we got from you guys ahead of time was really great, so that we could tailor this.

55:30 If you have any questions, you certainly can give me a call give one of our team leads and call, and we'll be glad to answer any questions that you may have on cots or anything else that you have. So thank you very much.

55:46 *many responses of Thank you*

55:54 One question that I just saw pop up. "So if I'm doing a SaaS product that's 5 years and my 5 year total is less than \$100,000, can I purchase that as a small purchase using quotes?"

56:07 Yes, you can. I would probably put in my request for quotes a non-appropriation clause so that if, in year 3 or 4, there is not an appropriation of funds, I can cancel it.

56:20 So that's one case where I might want to put some extra terms in that are required by law.

