

# STATE FISCAL ACCOUNTABILITY AUTHORITY

Meeting of Tuesday, August 13, 2019 -- 10:00 A. M.

Room 252, Edgar A. Brown Building

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## AGENDA INDEX

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STATE FISCAL ACCOUNTABILITY AUTHORITY  
MEETING OF August 13, 2019

REGULAR SESSION

ITEM NUMBER 1

AGENCY: State Treasurer's Office

SUBJECT: Bond Counsel Selection

The State Treasurer's Office has provided the following notification, for informational purposes, of the firms selected and approved:

**CONDUIT ISSUES:**

Description of Issue	Agency/Institution (Borrower)	Bond Counsel	Issuer's Counsel
\$3,650,000; Economic Development Revenue Refunding Bonds; Lexington-Richland Alcohol and Drug Abuse Council ("LRADAC"); Series 2019 (South Carolina Jobs-Economic Development Authority – "SC JEDA")	LRADAC Conduit: SC JEDA	Haynsworth Sinkler Boyd – Kathy McKinney, Kimberly Witherspoon	Nexsen Pruett – Laurie Becker
\$60,000,000; Economic Development Revenue Bonds; The Heritage at Forest Acres; Series 2019 (SC JEDA)	The Heritage at Forest Acres Conduit: SC JEDA	Haynsworth Sinkler Boyd – Kathy McKinney, Kimberly Witherspoon	Parker Poe – Emily Luther, Ray Jones
\$13,500,000; Economic Development Revenue Bonds; Lander RWS Properties, LLC; Series 2019 (SC JEDA)	Lander RWS Properties, LLC Conduit: SC JEDA	Pope Flynn – Gary Pope, Bill Musser, Marc Oberdorff	Haynsworth Sinkler Boyd – Kathy McKinney, Kimberly Witherspoon
\$12,000,000; Educational Facilities Revenue and Revenue Refunding Bonds; Columbia College; Series 2019 (SC JEDA)	Columbia College Conduit: SC JEDA	Haynsworth Sinkler Boyd – Kathy McKinney, Kimberly Witherspoon	Pope Flynn – Joe Lucas
\$30,000,000; Economic Development Revenue Bonds; Port Royal I, LLC; Series 2019 (SC JEDA)	Port Royal I, LLC Conduit: SC JEDA	Burr Forman McNair – Michael Seezen; Ice Miller – Philip Genetos	Haynsworth Sinkler Boyd – Kathy McKinney, Kimberly Witherspoon



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**AGENCY:** State Treasurer's Office

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**SUBJECT:** Bond Counsel Selection

**GENERAL OBLIGATION / REVENUE ISSUES:**

Description of Issue	Agency/Institution	Approved Bond Counsel
\$50,000,000 Academic and Administrative Facilities Revenue Bonds; (Simons Center for the Arts); Series 2019A	College of Charleston	Burr Forman McNair – William Youngblood, Rion Foley

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**AUTHORITY ACTION REQUESTED:**

In accord with Authority policy, receive the State Treasurer's Office report of bond counsel as information.

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**ATTACHMENTS:**

Bond Counsel Selection Approved by the State Treasurer's Office

**The State Treasurer advises the State Fiscal Accountability Authority, for informational purposes, of the firms selected and approved for its August 13, 2019 meeting:**

**CONDUIT ISSUES:**

<b>Description of Issue</b>	<b>Agency/Institution (Borrower)</b>	<b>Bond Counsel</b>	<b>Issuer's Counsel</b>	<b>Date STO Approved</b>
\$3,650,000; Economic Development Revenue Refunding Bonds; Lexington-Richland Alcohol and Drug Abuse Council ("LRADAC"); Series 2019 (South Carolina Jobs-Economic Development Authority – "SC JEDA")	LRADAC Conduit: SC JEDA	Haynsworth Sinkler Boyd – Kathy McKinney, Kimberly Witherspoon	Nexsen Pruett – Laurie Becker	06/19/2019
\$60,000,000; Economic Development Revenue Bonds; The Heritage at Forest Acres; Series 2019 (SC JEDA)	The Heritage at Forest Acres Conduit: SC JEDA	Haynsworth Sinkler Boyd – Kathy McKinney, Kimberly Witherspoon	Parker Poe – Emily Luther, Ray Jones	06/26/2019
\$13,500,000; Economic Development Revenue Bonds; Lander RWS Properties, LLC; Series 2019 (SC JEDA)	Lander RWS Properties, LLC Conduit: SC JEDA	Pope Flynn – Gary Pope, Bill Musser, Marc Oberdorff	Haynsworth Sinkler Boyd – Kathy McKinney, Kimberly Witherspoon	06/28/2019
\$12,000,000; Educational Facilities Revenue and Revenue Refunding Bonds; Columbia College; Series 2019 (SC JEDA)	Columbia College Conduit: SC JEDA	Haynsworth Sinkler Boyd – Kathy McKinney, Kimberly Witherspoon	Pope Flynn – Joe Lucas	07/12/2019
\$30,000,000; Economic Development Revenue Bonds; Port Royal I, LLC; Series 2019 (SC JEDA)	Port Royal I, LLC Conduit: SC JEDA	Burr Forman McNair – Michael Seezen; Ice Miller – Philip Genetos	Haynsworth Sinkler Boyd – Kathy McKinney, Kimberly Witherspoon	07/16/2019

**GENERAL OBLIGATION / REVENUE ISSUES:**

<b>Description of Issue</b>	<b>Agency/Institution</b>	<b>Approved Bond Counsel</b>	<b>Date STO Approved</b>
\$50,000,000 Academic and Administrative Facilities Revenue Bonds; (Simons Center for the Arts); Series 2019A	College of Charleston	Burr Forman McNair – William Youngblood, Rion Foley	05/29/2019

**SPECIAL ASSIGNMENT OF BOND COUNSEL:**

<b>Description of Issue</b>	<b>Agency/Institution</b>	<b>Approved Bond Counsel</b>	<b>Date STO Approved</b>

AGENCY: Department of Administration, Capital Budget Office

SUBJECT: Permanent Improvement Projects

State Fiscal Accountability Authority approval is requested for the following permanent improvement project establishment requests and budget revisions which have been reviewed favorably by the Joint Bond Review Committee:

**Establish Project for A&E Design**

- (a) Summary 1-2020: JBRC Item 1. (H09) The Citadel  
Project: 9621, Supplemental Housing  
Included in Annual CPIP: No – The decision to replace this facility was made after the 2018 CPIP submission.  
JBRC/SFAA Phase I Approval: N/A

CHE Recommended Approval: 6/6/19

<u>Source of Funding</u> <u>Detail</u>	<u>Original Budget</u> <u>Amount</u>	<u>Cumulative</u> <u>Changes Since</u> <u>Original Budget</u>	<u>Current Budget</u>	<u>Current Budget</u> <u>Adjustment</u> <u>Requested</u>	<u>Total Budget</u> <u>After Current</u> <u>Adjustment</u>
Other, Barracks Maintenance Reserve	-	-	-	23,453	23,453
All Sources	-	-	-	<u>23,453</u>	<u>23,453</u>

Funding Source: \$23,453 Other, Barracks Maintenance Reserve Funds, which come from Barracks (dormitory) profits. Each year the profits from the Barracks (dormitories) are swept into the Barracks Maintenance Reserve Account.

Request: Establish project and budget for \$23,453 (Other, Barracks Maintenance Reserve Funds) to begin Phase I A&E pre-design to replace the current, 20-year-old, 16 bed modular trailer (VTR) with a 50-52 bed, R-2 modular unit for supplemental housing. The current facility is 2,514 square feet and the new facility will be 8,000 square feet. The demand for the new facility is to house overflow students from the barracks during the fall semester until normal attrition allows for those students to move into the barracks. The remainder of the school year the facility will be used by visiting teams and athletic teams at The Citadel during campus closures over Thanksgiving, Christmas, and spring furloughs, as well as graduation in May, as needed. 10 staff members will oversee the students but are not housed in this space. The agency estimates total project costs at \$1,563,533. (See attachment 1 for additional annual operating costs.)

AGENCY: Department of Administration, Capital Budget OfficeSUBJECT: Permanent Improvement Projects

- (b) Summary 1-2020: JBRC Item 3. (H27) University of South Carolina - Columbia  
Project: 6130, Taylor House Maintenance Renovation  
Included in Annual CIP: Yes – 2018 CIP Priority 5 of 7 in FY20 (estimated at \$1,500,000)  
JBRC/SFAA Phase I Approval: N/A

CHE Recommended Approval: 6/6/19

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, Private Gifts	-	-	-	24,500	24,500
All Sources	=	=	=	<u>24,500</u>	<u>24,500</u>

Funding Source: \$24,500 Other, Private Gift Funds, which are funds received specifically designated for this work.

Request: Establish project and budget for \$24,500 (Other, Private Gift Funds) to complete a significant amount of interior historic restoration and building systems replacement on the Taylor House. The work will include architectural restoration of floors, walls, decorative plaster, fireplaces, and the monumental stair. Infrastructure work will include mechanical systems, electrical systems, fire sprinklers and other core work as the budget will permit. The Taylor House was originally constructed in 1908 and is 111 years old. The facility is 8,076 square feet and the entire building will be renovated. 20 staff members and 20 clients are expected to use the space associated with the building. The agency estimates total project costs at \$1,630,000.

- (c) Summary 1-2020: JBRC Item 4. (H27) University of South Carolina - Columbia  
Project: 6131, Thornwell College Maintenance Renovation  
Included in Annual CIP: Yes – 2018 CIP Priority 11 of 11 in FY19 (estimated at \$12,000,000)  
JBRC/SFAA Phase I Approval: N/A

CHE Recommended Approval: 6/6/19

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, Housing Maintenance Reserve	-	-	-	165,000	165,000
All Sources	=	=	=	<u>165,000</u>	<u>165,000</u>

AGENCY: Department of Administration, Capital Budget Office

SUBJECT: Permanent Improvement Projects

Funding Source: \$165,000 Other, Housing Maintenance Reserve Funds, which are derived from the Housing operating budget which includes housing fees and revenues generated by laundry operations, conferences, and interest.

Request: Establish project and budget for \$165,000 (Other, Housing Maintenance Reserve Funds) to comprehensively renovate the residential portion of Thornwell College. The scope will include replacement of mechanical and electrical infrastructure and replacement of interior finishes, the addition of electronic access door hardware to unit entrances, and windows will be evaluated to determine if they require replacement. The residence hall has not been renovated in decades and requires systems replacement and new finishes to be consistent with the quality and functionality of other university housing. Thornwell College was constructed in 1913 and is 106 years old. The total square footage is 38,421 square feet with the residential portion affected by this work being 22,486 square feet. The East Office Annex portion will not be renovated. 60 students will reside in the building. The agency estimates total project costs at \$12,000,000. (See attachment 2 for additional annual operating cost savings.)

- (d) Summary 1-2020: JBRC Item 5. (H27) University of South Carolina - Columbia  
 Project: 6133, Campus Village Residential Development  
 Included in Annual CIP: No  
 JBRC/SFAA Phase I Approval: N/A

CHE Recommended Approval: 8/1/19.

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, Developer Funds at Risk	-	-	-	1,200,000	1,200,000
All Sources	=	=	=	<u>1,200,000</u>	<u>1,200,000</u>



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AGENCY: Department of Administration, Capital Budget Office

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SUBJECT: Permanent Improvement Projects

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Funding Source: \$1,200,000 Other, Developer Funds at Risk, which is the value of design work performed by the successful offeror, at his own risk, and who was selected through a solicitation approved by the USC Board of Trustees and coordinated with the SC Office of the State Engineer.

Request: Establish project and authorization for \$1,200,000 (Other, Developer Funds at Risk) to redevelop 9 acres of property owned by the university to include the demolition of Cliff Apartments and the construction of four residential buildings and a parking facility and all associated site work. Campus Village is envisioned as a comprehensive and transformational student residence project achieving numerous campus objectives consistent with the vision of the 2018 Master Plan. These objectives include responding to enrollment growth, eliminating the abatement and maintenance of Cliff Apartments, reimagine a predominantly barren surface parking lot and create a village surrounded by green space, provide on-site amenities, and a site plan which strengthens the South Marion Street pedestrian promenade connecting Campus Village and the Athletics Village. Four residential buildings totaling 525,000 gross square feet and a 175-car transportation hub/parking facility will be constructed for a total gross constructed of approximately 636,090 gross square feet. The facilities will be designed and constructed to meet two Green Globes certification standards. An estimated 2,000 students will utilize the space associated with the project. The agency estimates total project costs at \$210,000,000. (See attachment 3 for additional annual operating costs.)

### **Establish Construction Budget**

- (e) Summary 1-2020: JBRC Item 10. (H27) University of South Carolina - Columbia  
Project: 6127, Jones PSC Biology Labs Renovation I  
Included in Annual CIP: Yes – 2018 CIP Priority 3 of 11 in FY19  
JBRC/SFAA Phase I Approval: December 2018 (estimated at \$6,500,000)  
  
CHE Recommended Approval: 6/6/19

AGENCY: Department of Administration, Capital Budget Office

SUBJECT: Permanent Improvement Projects

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, Institutional Capital Project	97,500	-	97,500	6,702,500	6,800,000
All Sources	<u>97,500</u>	-	<u>97,500</u>	<u>6,702,500</u>	<u>6,800,000</u>

Funding Source: \$6,800,000 Other, Institutional Capital Project Funds, which are generated from the portion of tuition and fees designated for State Institution Bonds. These funds pay debt service first and the remainder is used for capital improvements.

Request: Increase budget to \$6,800,000 (add \$6,702,500 Other, Institutional Capital Project Funds) to begin Phase II design and construction to gut and renovate the first floor, south wing, of Jones PSC to adapt space currently allocated to aged chemistry teaching labs to become modern biology teaching labs for the College of Arts and Sciences. Associated work will also occur in the basement, on the fourth floor and in shafts that connect these floors to support the first-floor work. The demolition will include abatement of asbestos and lead paint. The first floor upfit will provide four modern teaching labs, three prep rooms, a classroom, a collaborative study area, student study rooms, and accessible toilet rooms. New mechanical HVAC construction on the fourth level will support the renovation on the first floor. Per the university, this project follows a long-range plan for adding and improving science teaching labs that addresses a shortfall of labs made more acute by enrollment growth. Enrollment in biology labs is projected to increase. The Jones Physical Sciences Center is 192,503 square feet and the portion to be renovated is approximately 13,100 square feet. Based on 10 lab sessions per week, 960 students will utilize the lab spaces. Other classroom, collaboration and study group spaces will accommodate an additional 118 students and faculty. The project contingency is 17.70% of the estimated cost to complete the project due to the concern of unforeseen conditions including structural, MEP, and hazardous materials which could create changes in scope during construction. Additionally, the complex nature of the project may deter bidders resulting in limited competition and higher bids. The project has extensive mechanical and plumbing work, and, in the university's recent experience, these trades are in high demand which is escalating bids. Lastly, renovation work in this location will be difficult to access and stage without disrupting academic and research areas which must remain operational during the

AGENCY: Department of Administration, Capital Budget Office

SUBJECT: Permanent Improvement Projects

renovation. The agency estimates total project costs at \$6,800,000. (See attachment 4 for additional annual operating cost savings.) The agency anticipates execution of the construction contract in April 2020 and completion of construction in August 2021.

- (f) Summary 1-2020: JBRC Item 12. (H59) Horry-Georgetown Technical College Project: 6144, Renovation of Grand Strand Buildings 100, 200 & 300 and Campus Infrastructure  
Included in Annual CPIP: Yes – 2018 CPIP Priority 1 of 2 in FY19 (estimated at \$10,000,000)  
JBRC/SFAA Phase I Approval: October 2018 (estimated at \$8,120,000)

CHE Recommended Approval: Pending CHE Board Approval on 8/1/19.

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, College	120,000	-	120,000	6,805,869	6,925,869
Other, Myrtle Beach Air Force Base Re- Development Authority	-	-	-	1,000,000	1,000,000
Other, Horry County Transportation Committee	-	-	-	525,640	525,640
All Sources	<u>120,000</u>	<u>-</u>	<u>120,000</u>	<u>8,331,509</u>	<u>8,451,509</u>

Funding Source: \$6,925,869 Other, College Funds, which are the cumulative excess of revenues over expenses. The college does not impose any fee to its Plant Fund or for capital projects. The Plant Funds are simply the excess of revenues over expenses accumulated over time for the purpose of funding capital projects and for meeting local matching requirements. \$1,000,000 Other, Myrtle Beach Air Force Base Re-Development Authority, which is a private entity from which the college received a fixed amount of funds for this project. \$525,640 Other, Horry County Transportation Committee, which is a county funding entity from which the college received a fixed amount of funds for this project.

Request: Increase budget to \$8,451,509 (add \$8,331,509 Other College, Other, Myrtle Beach Air Force Base Re-Development Authority, and Other Horry County Transportation Committee Funds) to renovate and extend the useful lives of buildings 100, 200, and 300 on the college's Grand Strand Campus and improve the overall campus infrastructure. The buildings were originally donated to the college by the former Myrtle Beach Air Force Base in the mid 1990s and include 140,000 square feet



AGENCY: Department of Administration, Capital Budget Office

SUBJECT: Permanent Improvement Projects

of classroom, lab, student services, and faculty office space that support 30 programs of study and more than 3,000 students. The structures range in age from 27 to 65 years old, lack energy efficient mechanical/electrical systems, require improvements to existing storm water systems and telecommunications/utility infrastructures, needs improvement to the sidewalk and road infrastructures, and otherwise are not conducive to modern instructional techniques. The renovations include weatherizing the building envelope, replacing existing windows, roof and drainage systems, improving storm water systems, upgrading HVAC systems, modernizing selected interior spaces, making landscape improvements, repairing and replacing sidewalks and parking spaces, improving exterior lighting, and upgrading/modernizing components of the telecommunications and utility infrastructure and better ensuring compliance with ADA guidelines. The Phase II estimated cost to complete the project has increased by \$331,509 from the Phase I estimate for increased contingency, increased site work, and increased size and configuration of selected parking areas. The agency estimates total project costs at \$8,451,509. (See attachment 5 for additional annual operating cost savings.) The agency anticipates execution of the construction contract in March 2020 and completion of construction in October 2021.

- (g) Summary 1-2020: JBRC Item 14. (N04) Department of Corrections  
 Project: 9740, Campbell – Renovate Housing Unit for Office Space  
 Included in Annual CIP: No – The project should have been included on the 2018 CIP but was removed based on other critical agency safety and security needs.  
 JBRC/SFAA Phase I Approval: May 2017 (estimated at \$1,700,000)

CHE Recommended Approval: N/A

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Appropriated State, FY16 & FY19 Carryforward	25,100	-	25,100	324,900	350,000
Other, Canteen	-	-	-	1,700,000	1,700,000
All Sources	<u>25,100</u>	<u>-</u>	<u>25,100</u>	<u>2,024,900</u>	<u>2,050,000</u>

Funding Source: \$350,000 Appropriated State, FY16 & FY19 Carryforward Funds.  
 \$1,700,000 Other, Canteen Funds, which is revenue derived wholly from the canteen operations within the Department of Corrections on behalf of the inmate population, which may be retained and expended

AGENCY: Department of Administration, Capital Budget Office

SUBJECT: Permanent Improvement Projects

Request:

by the department for the continuation of the operation of said canteens and the welfare of the inmate population or, at the discretion of the Director, used to supplement costs of operations.

Increase budget to \$2,050,000 (add \$2,024,900 Appropriated State, FY16 & FY19 Carryforward Funds and Other, Canteen Funds) to establish Phase II design and construction to renovate the inmate housing unit at Campbell Pre-Release Center for use as office space. The housing unit has not been used for housing inmates since the Pre-Release Center closed in 2015. The scope of work converts the institutional housing structure to general office use which will facilitate procurement and human resource services outside the security fence boundary but still within the SCDC Broad River Complex. Approximately 26 to 30 staff members will be assigned to offices and standing cubicles. The 11,150 square foot facility is approximately 27 years old. The Phase II estimated cost to complete the project has increased by \$350,000 from the Phase I estimate because the Phase I estimate was provided by in-house agency staff prior to any design work, whereas, the Phase II estimate was provided by a third-party architect. Although agency staff make every attempt to provide the most accurate estimate, the agency cannot always account for all renovation costs prior to actual design. The agency estimates total project costs at \$2,050,000. The agency anticipates execution of the construction contract in December 2019 and completion of construction in December 2020.

(h) Summary 1-2020: JBRC Item 15. (N04) Department of Corrections

Project: 9748, Lieber CI – Video Surveillance System

Included in Annual CIP: No - The agency continues to have an immense infrastructure to house an incarcerated inmate population. Due to the unpredictability of available funding, projects arise out of emergency or change in security needs as predicated by the actions of inmates or the ever-changing inmate population.

JBRC/SFAA Phase I Approval: October 2018 (estimated at \$1,063,425)

CHE Recommended Approval: N/A

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Appropriated State, FY18 & FY19 Carryforward	15,950	-	15,950	1,047,182	1,063,132
All Sources	<u>15,950</u>	<u>-</u>	<u>15,950</u>	<u>1,047,182</u>	<u>1,063,132</u>

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AGENCY: Department of Administration, Capital Budget Office

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SUBJECT: Permanent Improvement Projects

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Funding Source: \$1,063,132 Appropriated State. FY18 & FY19 Carryforward Funds.  
Request: Increase budget to \$1,063,132 (add \$1,047,182 Appropriated State, FY18 & FY19 Carryforward Funds) to establish Phase II design and construction for the installation of equipment and dedicated network infrastructure at Lieber Correctional Institution. The items to be installed include fiber optic cable, upgrading existing analog cameras with IP digital cameras, video servers, switches and network racks, additional cameras to provide constant surveillance of the inmate population, securing rooms for the equipment throughout the institution, multiple video management workstations and monitors, interfacing with other security systems such as the perimeter fence detection system, and enhanced recording for evaluation of security events, all of which will enhance the safety and security of the Lieber Correctional Institution. The video surveillance system will be installed in all the housing units and inmate common areas – both for interior and exterior applications. The installation will be accomplished utilizing SCDC's in-house/inmate labor forces. Lieber Correctional Institution was constructed in 1986, making it 33 years old, and can house up to 1,379 inmates and is staffed by approximately 235 individuals. The entire institution will be affected by this project and is 361,000 square feet. The agency estimates total project costs at \$1,063,425.00. The agency anticipates execution of the construction contract in October 2019 and completion of construction in November 2020.

#### **Establish Construction Budget & Change Source of Funds**

- (i) Summary 1-2020: JBRC Separate Item. (H15) College of Charleston  
Project: 9650, Simons Center for the Arts Renovation  
Included in Annual CIP: Yes – 2018 CIP Priority 5 of 7 in FY19 (estimated at \$47,000,000)  
JBRC/B&CB Phase I Approval: June 2012 (estimated at \$21,000,000)  
Admin. Phase I Increase Approval: May 2015 (estimated at \$21,000,000)  
  
CHE Recommended Approval: 6/6/19



AGENCY: Department of Administration, Capital Budget Office

SUBJECT: Permanent Improvement Projects

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Revenue Bonds	-	-	-	45,000,000	45,000,000
Appropriated State, FY15 Proviso 118.16 (nonrecurring)	-	529,781	529,781	-	529,781
Other, College Fees	315,000	-	315,000	-	315,000
Other, Capital Project Institutional	-	-	-	4,155,219	4,155,219
All Sources	<u>315,000</u>	<u>529,781</u>	<u>844,781</u>	<u>49,155,219</u>	<u>50,000,000</u>

**Funding Source:** \$45,000,000 Revenue Bonds. \$529,781 Appropriated State, FY15 Proviso 118.16 (nonrecurring) Funds. \$315,000 Other, College Fee Funds, which are a portion of the student bill not specifically earmarked/dedicated for debt service, auxiliary enterprises, or student clubs or activities. It is generated through charges for course credit as well as ancillary charges for labs, transcripts, and other miscellaneous items. \$4,155,219 Other, Capital Project Institutional Funds, which are revenues generated by the Capital Improvement Fee that are in excess of the current annual debt service related to bonds issued under SC Code of Laws Section 59-130 Article 5. This fee is that portion of the student bill earmarked for debt service and renewal of the physical infrastructure.

**Request:** Increase budget to \$50,000,000 (add \$49,155,219 Revenue Bonds and Other, Capital Project Institutional Funds) to establish Phase II for the development of construction/bid documents and approval of the construction budget. This project will provide for the renovation and expansion of the Simons Center for the Arts. The building requires infrastructure renovation/replacement, upgrades to meet current building accessibility codes and space utilization alterations to meet current and future program needs. Specifically, the project will provide a small central energy plant to power this building and two adjacent structures; a state-of-the-art black box theater; expanded storage and studio space for the costume shop; renovated support spaces for performance areas; renovated Emmett Robinson Theater; upgrades to printmaking, sculpture, and painting studios; new computer and design labs; a radio and music production studio; and faculty/staff offices. This project will be constructed to meet two Green Globes Certification standards with anticipated energy savings of \$605,258 over a 30-year period. The building was constructed in 1979 and is 40 years old.

AGENCY: Department of Administration, Capital Budget Office

SUBJECT: Permanent Improvement Projects

Mechanical, electrical and plumbing systems are original to the building. No significant renovations have occurred since the original construction. The agency estimates total project costs at \$50,000,000. (See attachment 6 for additional annual operating cost savings.) The agency anticipates execution of the construction contract in November 2020 and completion of construction in August 2022.

#### **Establish Construction Budget, Revise Scope & Change Source of Funds**

- (j) Summary 1-2020: JBRC Item 17. (H29) University of South Carolina - Aiken  
 Project: 9553, USC Aiken Penland HVAC Renovation  
 Included in Annual CPIP: Yes – 2018 CPIP Priority 1 of 2 in FY19 (estimated at \$4,000,000)  
 JBRC/SFAA Phase I Approval: May 2018 (estimated at \$1,500,000)

CHE Recommended Approval: 6/6/19

<u>Source of Funding</u> <u>Detail</u>	<u>Original Budget</u> <u>Amount</u>	<u>Cumulative</u> <u>Changes Since</u> <u>Original Budget</u>	<u>Current Budget</u>	<u>Current Budget</u> <u>Adjustment</u> <u>Requested</u>	<u>Total Budget</u> <u>After Current</u> <u>Adjustment</u>
FY19 Capital Reserve	-	-	-	3,500,000	3,500,000
Other, USC Aiken Institutional	22,500	-	22,500	(22,500)	-
Aiken Institutional Capital Project	-	-	-	500,000	500,000
All Sources	<u>22,500</u>	<u>-</u>	<u>22,500</u>	<u>3,977,500</u>	<u>4,000,000</u>

**Funding Source:** \$3,500,000 FY19 Capital Reserve Funds. \$500,000 Other, Aiken Institutional Capital Project Funds, which are generated from the portion of tuition and fees designated for State Institution Bonds. These funds pay debt service first and the remainder is used for capital improvements.

**Request:** Increase budget to \$4,000,000 (add \$3,977,500 FY19 Capital Reserve and Other, Aiken Institutional Capital Project Funds) and revise the project scope to replace the entire mechanical HVAC system in the Robert E Penland Administration Building constructed in 1973. The original scope of work only included replacing a significant portion of the HVAC system. This work will include replacing air handlers, ductwork, VAV boxes and digital controls. Additionally, the project scope will include installing a sprinkler system, replacing the fire alarm

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system and provide new lighting. The work will require existing suspended ceilings be removed to access the plenum to remove the existing HVAC system and install a new system. New ceilings will be reinstalled. The occupants of the building will be relocated in two phases. The existing HVAC system is original to the 58,447 square foot, 46-year-old building and has reached the end of its serviceable life. The system is vulnerable to failure at any time. This campus administration and academic programs facility accommodates approximately 100 faculty and staff and 675 students. The Phase I request included a reduced scope of work due to funding constraints. With state funds currently available, the Phase II request includes the original intended scope of work reflected in the 2018 CPIP. The agency estimates total project costs at \$4,000,000. (See attachment 7 for additional annual operating cost savings.) The agency anticipates execution of the construction contract in December 2019 and completion of construction in August 2020.

### Establish Construction Budget & Revise Scope

- (k) Summary 1-2020: JBRC Item 18. (E24) Office of the Adjutant General  
Project: 9817, Statewide Act of Nature Repairs  
Included in Annual CPIP: No – This is an unforeseen project due to Hurricane Florence.  
JBRC/SFAA Phase I Approval: January 2019 (estimated at \$816,850)  
Admin. Change Source of Funds Approval: May 2019 (estimated at \$816,850)

CHE Recommended Approval: N/A

<u>Source of Funding</u> <u>Detail</u>	<u>Original Budget</u> <u>Amount</u>	<u>Cumulative</u> <u>Changes Since</u> <u>Original Budget</u>	<u>Current Budget</u>	<u>Current Budget</u> <u>Adjustment</u> <u>Requested</u>	<u>Total Budget</u> <u>After Current</u> <u>Adjustment</u>
Appropriated State	3,750	11,250	15,000	1,052,296	1,067,296
Federal, National Guard Bureau	11,250	(11,250)	-	-	-
All Sources	<u>15,000</u>	-	<u>15,000</u>	-	<u>1,067,296</u>

Funding Source: \$1,067,296 Appropriated State.

Request: Increase budget to \$1,067,296 and revise the project scope (add \$1,052,296 Appropriated State Funds) to proceed with Phase II construction for the restoration of armories effected by Hurricane Florence. The Sumter facility is being removed from this project and will be completed under project E24-9793 with the full Sumter Renovation. This project will make repairs to the readiness centers in



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AGENCY: Department of Administration, Capital Budget Office

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SUBJECT: Permanent Improvement Projects

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Marion, Mullins and Manning that were impacted by Hurricane Florence on September 12, 2018. Hurricane Florence made landfall in New Bern, North Carolina and the Pee Dee Region of our state experienced hurricane force and tropical storm force winds, 20 inches of rain and flooding. The President declared a state of emergency for the state and ordered federal aid to supplement state and local recovery efforts. The Pee Dee Region Readiness Centers suffered significant damage from the hurricane, which is impacting South Carolina National Guard mission readiness and soldier morale. The 17,271 square foot 39-year-old Marion center repairs include replacing the caulking and sealing around windows in the readiness center and other minor repairs. The 25,520 square foot 31-year-old Mullins center repairs include replacing mortar (re-grouted) on the drill hall wall, water proofing wall, removing mold from walls, painting of walls, replacing floor tiles and other minor repairs. The 25,960 square foot 23-year-old Manning center repairs include covering window sills with metal, water proofing walls, clean and paint interior walls, replace damaged ceiling tiles, and replace carpet/floor tiles and other minor repairs. Each readiness center is utilized by approximately 100 soldiers. They are also rentable to the public with approved requests. The Phase II estimated cost to complete the project has increased by \$250,446 from the Phase I estimate due to the need to install numerous items that were not predicted in the first cost estimate. Some of the significant items include moisture probes, replacement of ceiling tile with scrubable acoustical paneling, painting of tectum roof deck, clean and install gutters, and disinfect facility with EPA registered products for mold and mildew. The agency estimates total project costs at \$1,067,296. The agency anticipates execution of the construction contract in September 2019 and completion of construction in June 2020.

### **Phase II Increase & Change Source of Funds**

- (l) Summary 1-2020: JBRC Item 19. (H18) Francis Marion University  
Project: 9574, FMU Honors Learning Center Construction  
Included in Annual CIP: Yes – 2018 CIP Priority 2 of 2 in FY19 (estimated at \$3,455,932)  
Admin. Phase I Approval: November 2016 (estimated at \$3,100,000)  
Admin. Phase II Approval: November 2018 (estimated at \$3,155,932)  
  
CHE Recommended Approval: 6/6/19

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SUBJECT: Permanent Improvement Projects

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Capital Improvement Bonds (trans from 9538)	-	255,932	255,932	-	255,932
FY15-16 Capital Reserve Funds	500,000	-	500,000	-	500,000
FY16-17 Appropriated State, Proviso 118.16 (nonrecurring)	200,000	-	200,000	-	200,000
FY18-19 Appropriated State, Proviso 118.15 (nonrecurring)	-	2,100,000	2,100,000	-	2,100,000
FY15-16 Appropriated State, Proviso 118.14 (nonrecurring) (trans from 9538)	-	100,000	100,000	-	100,000
Other, FMU Maintenance Reserve	-	-	-	1,144,068	1,144,068
All Sources	<u>700,000</u>	<u>2,455,932</u>	<u>3,155,932</u>	<u>1,144,068</u>	<u>4,300,000</u>

Funding Source: \$255,932 Capital Improvement Bonds. \$500,000 FY15-16 Capital Reserve Funds. \$200,000 FY16-17 Appropriated State - Proviso 118.16 (nonrecurring) Funds. \$2,100,000 FY18-19 Appropriated State – Proviso 118.15 (nonrecurring) Funds. \$100,000 FY15-16 Appropriated State – Proviso 118.14 (nonrecurring) Funds. \$1,144,068 Other, FMU Maintenance Reserve Funds, which is a capital maintenance reserve and includes revenue received from a \$100 per full time student tuition fee, as well as a \$100 facility fee to support reserve funding for capital maintenance/operational needs as needed.

Request: Increase budget to \$4,300,000 and change source of funds (add \$1,144,068 Other, FMU Maintenance Reserve Funds) to cover cost above the university's original estimate. The university has completed the short-listed Design-Build teams' presentation and interview process. They will request for concurrence in posting "Notice of Intent to Award Design-Build Contract", as such, postured to go into negotiations with the selection committees agreed upon Design-Build Team. Two of the three Design-Build teams presented cost well above the university's estimate. The new Honors Learning Center program/academic facility will have 15,000 square feet and will include multi-purpose



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instructional classrooms, faculty offices and seminar/conference rooms for the FMU Honors program, the McNair Center for Research and Service, FMU International Programs as well as for other university classes and associated spaces. The project will be constructed to two Green Globes certification standards with anticipated energy savings of \$483,750 over 30 years. Per the university, the center will enhance teaching and learning for Francis Marion students and will assist the university in better meeting the needs of the Pee Dee region and the state of SC. The agency estimates total project costs at \$4,300,000. (See attachment 8 for additional annual operating costs.) The agency anticipates execution of the construction contract in August 2019 and completion of construction in August 2020.

### Phase II Increase

- (m) Summary 1-2020: JBRC Item 21. (J12) Department of Mental Health  
 Project: 9736, Harris Hospital HVAC and Sprinkler Renovations  
 Included in Annual CIP: Yes – 2018 CIP Priority 1 of 13 in FY19 (estimated at \$14,604,534)  
 JBRC/SFAA Phase I Approval: December 2014 (estimated at \$8,100,000)  
 JBRC/SFAA Phase II Approval: June 2016 (estimated at \$10,300,000)  
 JBRC/SFAA Phase II Increase Approval: August 2017 (estimated at \$13,089,595)  
 JBRC/SFAA Phase II Increase Approval: December 2018 (estimated at \$15,376,812)

CHE Recommended Approval: N/A

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, Capital Improvement & Maintenance	120,000	15,256,812	15,376,812	791,000	16,167,812
All Sources	<u>120,000</u>	<u>15,256,812</u>	<u>15,376,812</u>	<u>791,000</u>	<u>16,167,812</u>

Funding Source: \$16,167,812 Other, Capital Improvement & Maintenance Funds, which is authorized by Proviso 35.7 to allow an interest-bearing fund with the State Treasurer to deposit funds appropriated for deferred maintenance and other one-time funds from any source. After receiving any required approvals, the department is authorized to expend these funds for the purpose of deferred maintenance, capital projects, and ordinary repair and maintenance.

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AGENCY: Department of Administration, Capital Budget Office

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Request: Increase budget to \$16,167,812 (add \$791,000 Other, Capital Improvement & Maintenance Funds) due to recent ligature resistant requirements and insufficient contingency funds needed to complete the renovations at the Patrick B. Harris Psychiatric Hospital in Anderson, SC. The project design is almost three years old and ligature resistant requirements to the facility have been change ordered in where possible. Due to this project being value engineered at the time of the award, the project only had 1.80% contingency funds available. The last project increase raised the contingency to 4.7%. This increase should put the contingency at 8.50% and leave \$730,713.13 remaining after the last change order adding ligature resistant sprinkler heads where semi-recessed were planned to go. Since sprinkler heads are a part of this scope of work it makes sense to include them so they don't have to go back and change them out in another project at a greater cost. All other ligature resistant items will be addressed in a separate ligature resistant project in 2020. The project scope replaces the 31-year-old HVAC distribution system, which is original to the building, including ductwork, underground chilled water piping, controls, and the energy plant's cooling towers. The existing fire sprinkler system is also original to the building and has experienced failures at piping joints, valves, and fittings. The facility is a 175,300-gross-square-foot acute inpatient hospital with 200 licensed beds and current operating capacity of 131 beds. It is currently utilized by 626 students, 311 staff and 777 clients. The agency estimates total project costs at \$16,167,812. (See attachment 9 for additional annual operating cost savings.) The agency anticipates completion of construction in October 2020.

### **Preliminary Land Acquisition**

- (n) Summary 1-2020: JBRC Item 24. (H27) University of South Carolina - Columbia Project: 6132, Intramural Recreation Fields  
Included in Annual CIP: Yes – 2018 CIP Priority 6 of 11 in FY19 (estimated at \$4,925,000)  
JBRC/SFAA Phase I Approval: N/A  
CHE Recommended Approval: 6/6/19

AGENCY: Department of Administration, Capital Budget Office

SUBJECT: Permanent Improvement Projects

<u>Source of Funding</u> <u>Detail</u>	<u>Original Budget</u> <u>Amount</u>	<u>Cumulative</u> <u>Changes Since</u> <u>Original Budget</u>	<u>Current Budget</u>	<u>Current Budget</u> <u>Adjustment</u> <u>Requested</u>	<u>Total Budget</u> <u>After Current</u> <u>Adjustment</u>
Other, Wellness Fee Reserves	-	-	-	20,000	20,000
All Sources	-	-	-	<u>20,000</u>	<u>20,000</u>

**Funding Source:** \$20,000 Other, Wellness Fee Reserve Funds, which are a component of full-time student tuition. The Student Wellness Fee is \$105 per semester. \$36 of the fee is dedicated to debt service for the state institution bonds previously issued to build the Strom Thurmond Fitness and Wellness Center. The remaining \$69 supports operations and a maintenance reserve.

**Request:** Establish project and budget for \$20,000 (Other, Wellness Fee Reserve Funds) to procure investigative studies required to adequately evaluate property prior to purchase. The university is considering the acquisition of 300 acres of property adjacent to the Congaree River. The land is at the west end of National Guard Road adjacent to the river. The land is flat and ideal for recreation and practice fields. It is being offered for sale by the university foundation for a proposed purchase price of \$3,250,000. Per the university, they have a significant shortage of intramural recreation fields. The 2018 University Master Plan designates this property as an appropriate site for Intramural Recreation Fields and a golf team practice facility. The Master Plan calculated the current and future deficiency of recreation fields and this land with future site future development will respond to this need. Per the university, the cost of this land is certain to be significantly less than land in the central business district and/or immediately adjacent to campus. Natural turf will be used for the fields. Currently the university leases recreation fields and would like to terminate those leases at their earliest opportunity so the lease cost can be reallocated to maintain the many more fields that can be developed on 300 acres. The agency estimates the land acquisition cost at \$3,300,000. (See attachment 10 for additional annual operating costs.)

- (o) Summary 1-2020: JBRC Item 25. (P24) Department of Natural Resources  
Project: 9995, Lancaster-Liberty Hill WMA Land Acquisition (TIR Tract)  
Included in Annual CIP: Yes – 2018 CIP Priority 17 of 17 in FY19 (estimated at unknown)  
JBRC/SFAA Phase I Approval: N/A

AGENCY: Department of Administration, Capital Budget Office

SUBJECT: Permanent Improvement Projects

CHE Recommended Approval: N/A

<u>Source of Funding Detail</u>	<u>Original Budget Amount</u>	<u>Cumulative Changes Since Original Budget</u>	<u>Current Budget</u>	<u>Current Budget Adjustment Requested</u>	<u>Total Budget After Current Adjustment</u>
Other, Fish & Wildlife Protection - Timber	-	-	-	20,000	20,000
All Sources	-	-	-	<u>20,000</u>	<u>20,000</u>

Funding Source: \$20,000 Other, Fish & Wildlife Protection – Timber Funds, which is income from timber harvests on DNR lands and placed in the Fish and Wildlife Protection Fund. Revenue from this source must be expended by DNR for the protection, promotion, propagation, and management of freshwater fisheries and wildlife, the enforcement of related laws, the administration of the department, and the dissemination of information, facts, and findings the department considers necessary.

Request: Establish project and budget for \$20,000 (Other, Fish & Wildlife Protection - Timber Funds) to procure investigative studies required to adequately evaluate property prior to purchase. The agency is considering the acquisition of approximately 593 acres of land in Lancaster County. The property is being offered by The Conservation Fund of Arlington Virginia for \$1,800,000. The property is located four miles northwest of the Liberty Hill community and is west of SC Highway 97. The DNR's Liberty Hill WMA adjoins the tract on the north, east and south sides. The tract contains forested uplands, high bluffs, granite outcrops, and Piedmont streams. The property provides habitat for deer, turkey and small game. Non-game species, including the golden eagle, have been documented on the adjoining WMA. After it is acquired, the property will be managed as part of the Liberty Hill WMA and be open to the public for outdoor recreational opportunities, including bird watching, hiking, hunting and fishing on the adjacent Catawba River. The agency estimates the land acquisition cost at \$1,820,000.

AUTHORITY ACTION REQUESTED:

Approve permanent improvement project establishment requests and budget revisions as requested by the Department of Administration, Capital Budget Office. All items have been reviewed favorably by the Joint Bond Review Committee.

ATTACHMENTS: Agenda item worksheet and attachments

**ADDITIONAL ANNUAL OPERATING COSTS / SAVINGS**  
**RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY Code H09 Name The Citadel, Military College of South Carolina

2. PROJECT 9621  
 Project # 9621 Name Supplemental Housing

3. ADDITIONAL ANNUAL OPERATING COSTS / SAVINGS. (Check whether reporting costs or savings.)

☒ COSTS ☐ SAVINGS ☐ NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS / SAVINGS				
Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) 2020	\$ 10,125.00	\$	\$	\$ 10,125.00
2) 2021	\$ 13,500.00	\$	\$	\$ 13,500.00
3) 2022	\$ 14,000.00	\$	\$	\$ 14,000.00

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).

6. Will the additional costs be absorbed into your existing budget? ☒ YES ☐ NO  
 If no, how will additional funds be provided?

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

<u>COST FACTORS</u>	<u>AMOUNT</u>
1. Electricity	\$9,625.00
2. Water & Sewer	500.00
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
TOTAL	\$10,125.00

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved. \_\_\_\_\_

9. Submitted By: COL Charles L. Cansler COL Charles L. Cansler, VP for Fin & Bus  
 Signature of Authorized Official and Title 4/23/19  
 Date

**ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS  
RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY  
Code H27 Name University of South Carolina

2. PROJECT  
Project # 6131 Name Thornwell College Maintenance Renovation

3. ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS. (Check whether reporting costs or savings.)

☐ COSTS

☒ SAVINGS

☐ NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS/SAVINGS				
Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) 17,532	\$	\$	\$	\$ 17,532
2) 17,532	\$	\$	\$	\$ 17,532
3) 17,532	\$	\$	\$	\$ 17,532

**Note: Potential utility and maintenance savings estimates will be confirmed during the Phase I design effort.**

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).

6. Will the additional costs be absorbed into your existing budget?  
If no, how will additional funds be provided?

☐ YES

☐ NO

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

<u>COST FACTORS</u>		<u>AMOUNT</u>
1. <u>Maintenance Costs</u>		<u>9,122</u>
2. <u>Energy</u>		<u>8,410</u>
3. _____		
4. _____		
5. _____		
6. _____		
TOTAL		<u>17,532</u>

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved. \_\_\_\_\_

9. Submitted By: [Signature] University Architect  
Signature of Authorized Official and Title

7/26/19  
Date



**ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS**  
**RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY  
Code H27 Name University of South Carolina

2. PROJECT 6133  
Project # 6133 Name Campus Village Residential Development

3. ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS. (Check whether reporting costs or savings.)

☒ X COSTS

☐ SAVINGS

☐ NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS/SAVINGS				
Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) 2022-23 (12 months)	\$	\$	\$3,827,021	\$3,827,021
2) 2023-24	\$	\$	\$3,922,697	\$3,922,697*
3) 2024-25	\$	\$	\$4,020,764	\$4,020,764*

\*Totals include 2.5% annual inflation

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).

Housing Revenue

6. Will the additional costs be absorbed into your existing budget? ☐ YES ☒ NO  
If no, how will additional funds be provided?

The new beds provided by the project will produce revenue to absorb the operating expenses.

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

<u>COST FACTORS</u>	<u>AMOUNT</u>
1. <u>Utilities*</u>	<u>\$889,726</u>
2. <u>Maintenance, Custodial and Annual Occupancy Preparation*</u>	<u>\$1,129,371</u>
3. <u>Grounds Maintenance</u>	<u>33,000</u>
4. <u>Management Fees (external management, not state employees)*</u>	<u>\$916,424</u>
5. <u>USC Personnel*</u>	<u>\$858,500</u>
6. _____	_____
7. _____	_____
8. _____	_____

\* Costs reflect the estimated net costs after removing 263 existing beds at Cliff Apartments (15% of 1808 new beds)

TOTAL \$3,827,021

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved. Maintenance positions are not state employees and are included in management cost.  
1 new USC-employed grounds keeper position needed. 64 USC Resident mentors and 4 USC Resident Life Coordinators.

9. Submitted By: [Signature] University Architect 6/25/2019  
Signature of Authorized Official and Title Date

**ADDITIONAL ANNUAL OPERATING COSTS / SAVINGS**  
**RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY Code H09 Name The Citadel, The Military College of South Carolina
2. PROJECT Project # 9618 Name Daniel Library HVAC Replacement

3. ADDITIONAL ANNUAL OPERATING COSTS / SAVINGS. (Check whether reporting costs or savings.)

☐ COSTS ☒ SAVINGS ☐ NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS / SAVINGS				
Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) 21-22	\$ (6,900.00)	\$ 0.00	\$ 0.00	\$ (6,900.00)
2) 22-23	\$ (6,900.00)	\$ 0.00	\$ 0.00	\$ (6,900.00)
3) 23-24	\$ (6,900.00)	\$ 0.00	\$ 0.00	\$ (6,900.00)

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).

6. Will the additional costs be absorbed into your existing budget? ☒ YES ☐ NO  
 If no, how will additional funds be provided?

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

<u>COST FACTORS</u>	<u>AMOUNT</u>
1. New HVAC units are more efficient - Savings	\$7,000.00
2. Transition from water cooled to air cooled chillers - Costs	(3,000.00)
3. Additional units for Museum and Archives - Costs	(3,000.00)
4. Increased outside airflow to meet Code - Costs	(1,000.00)
5. Maintenance & repair to existing units - Savings	(6,900.00)
6. _____	_____
7. _____	_____
8. _____	_____
TOTAL	(\$6,900.00)

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved. 0

9. Submitted By: Charles L. Cansler COL Charles L. Cansler; VP for Finance   
 Signature of Authorized Official and Title

6/12/19  
 Date

**COL Charles L. Cansler**  
**The Citadel Military College**  
**VP for Finance & Business**



**ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS  
RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY  
Code H27 Name University of South Carolina

2. PROJECT  
Project # 6127 Name Jones PSC Biology Labs Renovation I

3. ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS. (Check whether reporting costs or savings.)

☐ COSTS

☒ SAVINGS

☐ NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS/SAVINGS				
Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) 2021-22	\$16,165	\$	\$	\$ 16,165.00
2) 2022-23	\$16,165	\$	\$	\$ 16,165.00
3) 2023-24	\$16,165	\$	\$	\$ 16,165.00

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).

6. Will the additional costs be absorbed into your existing budget?  
If no, how will additional funds be provided?

☐ YES

☐ NO

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

<u>COST FACTORS</u>		<u>AMOUNT</u>
1. <u>Energy Costs</u>		<u>3,065</u>
2. <u>Maintenance Costs</u>		<u>13,100</u>
3. _____		
4. _____		
5. _____		
TOTAL		<u>16,165</u>

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved. \_\_\_\_\_

9. Submitted By: [Signature] University Architect  
Signature of Authorized Official and Title

4/26/19  
Date

**ADDITIONAL ANNUAL OPERATING COSTS / SAVINGS**  
**RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY Code H59 Name Horry-Georgetown Technical College

2. PROJECT Project # 6144 Name Renovation of Grand Strand Buildings 100, 200 & 300 and Campus Infrastructure

3. ADDITIONAL ANNUAL OPERATING COSTS / SAVINGS. (Check whether reporting costs or savings.)

☐ COSTS ☒ SAVINGS ☐ NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS / SAVINGS				
Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) 2021	\$ 21,000.00	\$	\$	\$ 21,000.00
2) 2022	\$ 84,000.00	\$	\$	\$ 84,000.00
3) 2023	\$ 84,000.00	\$	\$	\$ 84,000.00

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).

6. Will the additional costs be absorbed into your existing budget? ☐ YES ☒ NO  
 If no, how will additional funds be provided?  
 N/A

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

<u>COST FACTORS</u>		<u>AMOUNT</u>
1. Utility Costs (Electric, Water, Sewer and Natural Gas)		\$60,500.00
2. Maintenance and Grounds Part-time Labor		\$23,500.00
3. _____		
4. _____		
5. _____		
6. _____		
7. _____		
8. _____		
TOTAL		\$84,000.00

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved. N/A

9. Submitted By: \_\_\_\_\_

*Handwritten Signature*  
 Signature of Authorized Official and Title

VP- FINANCE AND  
 ADMINISTRATION

6/4/19

Date

**ADDITIONAL ANNUAL OPERATING COSTS / SAVINGS**  
**RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY Code H15 Name College of Charleston

2. PROJECT Project # 9650 Name Simons Center for the Arts Renovation - Phase II

3. ADDITIONAL ANNUAL OPERATING COSTS / SAVINGS. (Check whether reporting costs or savings.)

☐

COSTS

☒

SAVINGS

☐

NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS / SAVINGS				
Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) FY 22-23	\$	\$	\$ 59,640.00	\$ 59,640.00
2) FY 23-24	\$	\$	\$ 62,030.00	\$ 62,030.00
3) FY 24-25	\$	\$	\$ 64,510.00	\$ 64,510.00

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).  
 Cost savings will be returned to E&G general operating fund.

6. Will the additional costs be absorbed into your existing budget?

☒

YES

☐

NO

If no, how will additional funds be provided?

N/A

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

COST FACTORS

AMOUNT

1.	<u>Estimated 22% reduction in annual energy consumption</u>	<u>\$40,320.00</u>
2.	<u>Estimated 30% reduction in annual water consumption</u>	<u>6,370.00</u>
3.	<u>Estimated 10% reduction in annual maintenance costs</u>	<u>12,950.00</u>
4.	<u></u>	<u></u>
5.	<u></u>	<u></u>
6.	<u></u>	<u></u>
7.	<u></u>	<u></u>
8.	<u></u>	<u></u>
TOTAL		<u>\$59,640.00</u>

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved. None

9.

Submitted By:

Paul Petruik

EVP/CFO

Signature of Authorized Official and Title

4/22/15

Date

**ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS  
RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY  
Code H29 Name USC Aiken

2. PROJECT  
Project # 9553 Name USC Aiken Penland HVAC Renovation

3. ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS. (Check whether reporting costs or savings.)

☐ COSTS

☒ SAVINGS

☐ NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS/SAVINGS				
Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) 2020-21	\$37,400	\$	\$	\$ 37,400.00
2) 2021-22	\$40,800	\$	\$	\$ 40,800.00
3) 2022-23	\$40,800	\$	\$	\$ 40,800.00

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).

6. Will the additional costs be absorbed into your existing budget?  
If no, how will additional funds be provided?

☐ YES

☐ NO

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

<u>COST FACTORS</u>		<u>AMOUNT</u>
1. <u>Energy Costs</u>		<u>29,333</u>
2. <u>Maintenance Costs</u>		<u>8,067</u>
3. _____		
4. _____		
5. _____		
6. _____		
7. _____		
8. _____		
TOTAL		<u>37,400</u>

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved. \_\_\_\_\_

9. Submitted By: [Signature] Director, Planning and Programming  
Signature of Authorized Official and Title

4/26/19  
Date



**ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS**  
**RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY  
 Code H18 Name Francis Marion University

2. PROJECT  
 Project # 9574 Name Honors Learning Center Construction

ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS. (Check whether reporting costs or savings.)

☒ COSTS

☐ SAVINGS

☐ NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS/SAVINGS				
Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) 20-21		\$	\$132,500	132,500
2) 21-22		\$	\$132,500	132,500
3) 22-23		\$	\$132,500	132,500

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).

Other Sources will be general operating revenues of the University which are derived of tuition revenue and other fees derived from operations of the University.

6. Will the additional costs be absorbed into your existing budget? ☒ YES ☐ NO  
 If no, how will additional funds be provided?

**State appropriated funding through square footage formula budget additions and Center usage fees.**

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

<u>COST FACTORS</u>		<u>AMOUNT</u>
1. Utilities		\$25,500
2. Supplies		\$12,000
3. Salary – maintenance position		\$65,000
4. Salary – custodial position		\$30,000
TOTAL		\$132,500

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved. 2

9. Submitted By: Darryl L. Bridges  
 Signature of Authorized Official and Title  
 Darryl L. Bridges, Vice President for Finance & Facilities

July 11, 2019  
 Date

**ADDITIONAL ANNUAL OPERATING COSTS / SAVINGS**  
**RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY Code J12 Name South Carolina Department of Mental Health

2. PROJECT Project # 9736 Name Harris Hospital HVAC and Fire Sprinkler Renovations

3. ADDITIONAL ANNUAL OPERATING COSTS / SAVINGS. (Check whether reporting costs or savings.)

☐

COSTS

☒

SAVINGS

☐

NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS / SAVINGS				
Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) 2020	\$ 30,000.00	\$	\$	\$ 30,000.00
2) 2021	\$ 60,000.00	\$	\$	\$ 60,000.00
3) 2022	\$ 60,000.00	\$	\$	\$ 60,000.00

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).

6. Will the additional costs be absorbed into your existing budget?  
If no, how will additional funds be provided?

☐

YES

☒

NO

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

COST FACTORS

AMOUNT

1. Utility Savings	\$15,000.00
2. Maintenance Savings	15,000.00
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
TOTAL	\$30,000.00

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved. \_\_\_\_\_

9. Submitted By:  Director, Physical Plant Services  
Signature of Authorized Official and Title

06/10/19

Date

**ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS  
RESULTING FROM PERMANENT IMPROVEMENT PROJECT**

1. AGENCY  
Code H27 Name University of South Carolina Columbia

2. PROJECT  
Project # 6132 Name Intramural Recreation Fields Preliminary Land Acquisition

3. ADDITIONAL ANNUAL OPERATING COSTS/SAVINGS. (Check whether reporting costs or savings.)

☒ COSTS

☐ SAVINGS

☐ NO CHANGE

4.

TOTAL ADDITIONAL OPERATING COSTS/SAVINGS Projected Financing Sources				
(1)	(2)	(3)	(4)	(5)
Fiscal Year	General Funds	Federal	Other	Total
1) 2019-20	\$4,167	\$	\$	\$ 0.00
2) 2020-21	\$10,000	\$	\$	\$ 0.00
3) 2021-22	\$10,000	\$	\$	\$ 0.00

Assume a closing by February 2020. The first year is prorated for 5 months.

5. If "Other" sources are reported in Column 4 above, itemize and specify what the other sources are (revenues, fees, etc.).

6. Will the additional costs be absorbed into your existing budget?  
If no, how will additional funds be provided?

☒ YES

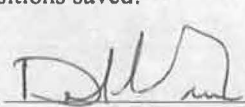
☐ NO

7. Itemize below the cost factors that contribute to the total costs or savings reported above in Column 5 for the first fiscal year.

<u>COST FACTORS</u>		<u>AMOUNT</u>
1. <u>Landscaping Maintenance</u>		<u>4167</u>
2. _____		
3. _____		
4. _____		
5. _____		
6. _____		

TOTAL

8. If personal services costs or savings are reported in 7 above, please indicate the number of additional positions required or positions saved. \_\_\_\_\_

9. Submitted By:  Director, Planning and Programming  
Signature of Authorized Official and Title

4/26/19  
Date

## Permanent Improvement Project Information for August 13, 2019 SFAA Meeting

Agency/ Project No.	Agency/Project Name	Original Approved Budget	Date of Original Approval	Phase I Amount	Date of Phase I Approval	Included in CIP	Total Projected Project Cost
H09-9621	Supplemental Housing	N/A	N/A	\$23,453	N/A	No	\$1,563,533
H27-6130	Taylor House Maintenance Renovation	N/A	N/A	\$24,500	N/A	Yes	\$1,630,000
H27-6131	Thornwell College Maintenance Renovation	N/A	N/A	\$165,000	N/A	Yes	\$12,000,000
H27-6133	Campus Village Residential Development	N/A	N/A	\$1,200,000	N/A	No	\$210,000,000
H27-6127	Jones PSC Biology Labs Renovation	\$97,500	12/11/18	\$97,500	12/11/18	Yes	\$6,800,000
H59-6144	Renovation of Grand Strand Buildings 100, 200, and 300	\$120,000	10/23/18	\$120,000	10/23/18	Yes	\$8,451,509
N04-9740	Campbell - Renovate Housing Unit for Office Space	\$25,100	5/2/17	\$25,100	5/2/17	No	\$2,050,000
N04-9748	Lieber CI - Video Surveillance System	\$15,950	10/23/18	\$15,950	10/23/18	No	\$1,063,132
H15-9650	Simons Center for the Arts Renovation	\$315,000	6/27/12	\$844,781	5/12/15	Yes	\$50,000,000
H29-9553	USC Aiken Penland HVAC Renovation	\$22,500	5/1/18	\$22,500	5/1/18	Yes	\$4,000,000
E24-9817	Statewide Act of Nature Repairs	\$15,000	1/16/19	\$15,000	1/16/19	Yes	\$1,067,296
H18-9574	FMU Honors Learning Center Construction	\$700,000	11/14/16	\$700,000	11/14/16	Yes	\$4,300,000
J12-9736	Harris Hospital HVAC and Sprinkler Renovations	\$120,000	12/8/14	\$120,000	12/8/14	Yes	\$16,167,812
H27-6132	Intramural Recreation Fields	N/A	N/A	\$20,000	N/A	Yes	\$3,300,000
P24-9995	Lancaster-Liberty Hill WMA Land Acquisition	N/A	N/A	\$20,000	N/A	Yes	\$1,820,000



**Additional Information on Funding Sources for  
Higher Education Permanent Improvement Projects**

**Item (a) – The Citadel – Supplemental Housing**

The source of funds for pre-design is Barracks Maintenance Reserve, which come from Barracks (dormitory) profits. Each year the profits from the Barracks (dormitories) are swept into the Barracks Maintenance Reserve Account.

The source of funds for construction is anticipated to be Barracks Maintenance Reserve.

The University reports that no increase in any student fee or tuition will be required for this project.

**Item (b) – University of South Carolina-Columbia – Taylor House Maintenance Renovation**

The source of funds for pre-design is Private Gifts, which are funds received specifically designated for this work.

The source of funds for construction is anticipated to be Capital Project Institutional and Private Gift Funds.

The University reports that no increase in any student fee or tuition will be required for this project.

**Item (c) – University of South Carolina-Columbia – Thornwell College Maintenance Renovation**

The source of funds for pre-design is Housing Maintenance Reserve Funds, which are derived from the Housing operating budget which includes housing fees and revenues generated by laundry operations, conferences, and interest.

The source of funds for construction is Housing Maintenance Reserve Funds.

The University reports that no increase in any student fee or tuition will be required for this project.

**Item (d) – University of South Carolina-Columbia – Campus Village Residential Development**

The source of funds for pre-design is Private Gift Funds, which were privately funded by the successful offeror, at his own risk, and who was selected from a previous Design/Build/Finance/Operate/Maintain solicitation approved by the USC Board of Trustees and coordinated with the SC Office of the State Engineer.

The source of funds for construction is Housing Revenue Bonds.

The University reports that no increase in any student fee or tuition will be required for this project.

**Item (e) – University of South Carolina-Columbia – Jones PSC Biology Labs Renovation**

The source of funds for construction is Institutional Capital Project Funds, which are generated from the portion of tuition and fees designated for State Institution Bonds. These funds pay debt service first and the remainder is used for capital improvements.

The University reports that no increase in any student fee or tuition will be required for this project.

**Item (f) – Horry-Georgetown Technical College – Renovation of Grand Strand Buildings 100, 200, and 300**

The source of funds for construction is College Funds, which are the cumulative excess of revenues over expenses, Myrtle Beach Air Force Base Re-Development Authority Funds, which is a private entity from which the college received a fixed amount of funds for this project and Horry County Transportation Committee, which is a county funding entity from which the college received a fixed amount of funds for this project.

The University reports that no increase in any student fee or tuition will be required for this project.

**Item (i) – College of Charleston – Simons Center for the Arts Renovation**

The source of funds for construction is Revenue Bonds, Appropriated State, FY15 Proviso 118.16 (nonrecurring) Funds, College Fee Funds, which are a portion of the student bill not specifically earmarked/dedicated for debt service, auxiliary enterprises, or student clubs or activities and Capital Project Institutional Funds, which are revenues generated by the Capital Improvement Fee that are in excess of the current annual debt service related to bonds issued under SC Code of Laws Section 59-130 Article 5.

The University reports that no increase in any student fee or tuition will be required for this project.

**Item (j) – University of South Carolina-Aiken – Penland HVAC Renovation**

The source of funds for construction is Capital Reserve Funds and Aiken Institutional Capital Project Funds, which are generated from the portion of tuition and fees designated for State Institution Bonds. These funds pay debt service first and the remainder is used for capital improvements.

The University reports that no increase in any student fee or tuition will be required for this project.

**Item (l) – Francis Marion University – Honors Learning Center Construction**

The source of funds for construction is Capital Improvement Bonds, FY15-16 Capital Reserve Funds, FY16-17 Appropriated State - Proviso 118.16 (nonrecurring) Funds, FY18-19 Appropriated State – Proviso 118.15 (nonrecurring) Funds, FY15-16 Appropriated State – Proviso 118.14 (nonrecurring) Funds, and FMU Maintenance Reserve Funds, which is a capital maintenance reserve and includes revenue received from a \$100 per full time student tuition fee, as well as a \$100 facility fee to support reserve funding for capital maintenance/operational needs as needed.

The University reports that no increase in any student fee or tuition will be required for this project.

**Item (n) – University of South Carolina-Columbia – Intramural Recreation Fields**

The source of funds for construction is Wellness Fee Reserve Funds, which are a component of full-time student tuition. The Student Wellness Fee is \$105 per semester. \$36 of the fee is dedicated to debt service for the state institution bonds previously issued to build the Strom Thurmond Fitness and Wellness Center. The remaining \$69 supports operations and a maintenance reserve.

The University reports that no increase in any student fee or tuition will be required for this project.

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AGENCY: Department of Administration, Executive Budget Office

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SUBJECT: South Carolina Law Enforcement Division - Helicopter Purchase

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The South Carolina Law Enforcement Division requests authorization to purchase a new helicopter to replace an aircraft involved in an incident on June 26, 2019, at the Summerville, SC airport, resulting in its total loss.

Section 1-11-405 of the South Carolina Code of Laws states provides that:

No aircraft may be purchased, leased, or lease-purchased for more than a thirty-day period by any state agency without the prior authorization of the Department of Administration or the State Fiscal Accountability Authority, as appropriate, and the Joint Bond Review Committee.

Following its last aircraft acquisition in 2014, SLED owned five helicopters: a 1964 Bell 10-passenger "rescue"/transport helicopter and four 2-passenger helicopters in various states of age and serviceability. In January 2016, SLED relinquished the Bell 10-passenger helicopter to the federal government's military surplus program due to rising maintenance costs and airframe safety issues due to its age. SLED also relinquished one of the 2-passenger helicopters to the federal government as it was acquired through the military surplus program and had reached the end of its service life.

Accordingly, following the Summerville incident, the SLED Aviation Unit currently owns two operable helicopters that are used primarily as an observation platform and have seating for two pilots and one to two passengers. They are equipped with infrared camera systems, searchlights, and microwave downlink systems.

SLED is challenged to maintain support its current level of support with only two available aircraft, and is unable to fulfill mission needs without the ability for personnel transport and heavy lift operations. An additional aircraft is necessary to ensure that aircraft are available while others are down for maintenance, inspection and multiple aviation missions. Moreover, SLED is the only state agency capable of providing 24-hour helicopter support to any municipal, county, state or federal agency, as well as for neighboring states. Its aircraft are essential for the movement of assets rapidly across the state, particularly during disaster relief efforts, and support efforts to locate missing children, elderly individuals suffering from dementia, fugitives, stolen materials, and for marijuana eradication and other assignments.

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AGENCY: Department of Administration, Executive Budget Office

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SUBJECT: South Carolina Law Enforcement Division, Helicopter Purchase

SLED proposes to purchase a used, late model helicopter similar in mission capabilities to the two remaining helicopters it currently operates. The cost in the used market for an aircraft in this category is estimated at \$2 million. The purchase will be funded by insurance proceeds and other fund cash balances.

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AUTHORITY ACTION REQUESTED:

As requested by the State Law Enforcement Division through the Department of Administration, Executive Budget Office, approve, in accordance with SC Code Section 1-11-405, the acquisition of an additional helicopter by the South Carolina Law Enforcement Division.

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ATTACHMENTS:

Agenda item worksheet; Section 1-11-405 of the South Carolina Code of Laws; South Carolina Law Enforcement Division memorandum dated July 11, 2019, regarding SLED Helicopter Procurement/Replacement

## STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

Meeting Scheduled for: August 13, 2019

Regular Agenda

1. **Submitted By:**

- (a) Agency: Department of Administration  
(b) Authorized Official Signature:

  
Brian J. Gaines Director, Executive Budget Office

2. **Subject:** South Carolina Law Enforcement Division – Helicopter Purchase

3. **Summary Background Information:**

The South Carolina Law Enforcement Division requests authorization to purchase a new helicopter to replace an aircraft involved in an incident on June 26, 2019, at the Summerville, SC airport, resulting in its total loss.

Section 1-11-405 of the South Carolina Code of Laws states provides that:

No aircraft may be purchased, leased, or lease-purchased for more than a thirty-day period by any state agency without the prior authorization of the Department of Administration or the State Fiscal Accountability Authority, as appropriate, and the Joint Bond Review Committee.

Following its last aircraft acquisition in 2014, SLED owned five helicopters: a 1964 Bell 10-passenger "rescue"/transport helicopter and four 2-passenger helicopters in various states of age and serviceability. In January 2016, SLED relinquished the Bell 10-passenger helicopter to the federal government's military surplus program due to rising maintenance costs and airframe safety issues due to its age. SLED also relinquished one of the 2-passenger helicopters to the federal government as it was acquired through the military surplus program and had reached the end of its service life.

Accordingly, following the Summerville incident, the SLED Aviation Unit currently owns two operable helicopters that are used primarily as an observation platform and have seating for two pilots and one to two passengers. They are equipped with infrared camera systems, searchlights, and microwave downlink systems.

SLED is challenged to maintain support its current level of support with only two available aircraft, and is unable to fulfill mission needs without the ability for personnel transport and heavy lift operations. An additional aircraft is necessary to ensure that aircraft are available while others are down for maintenance, inspection and multiple aviation missions. Moreover, SLED is the only state agency capable of providing 24-hour helicopter support to any municipal, county, state or federal agency, as well as for neighboring states. Its aircraft are essential for the movement of



assets rapidly across the state, particularly during disaster relief efforts, and support efforts to locate missing children, elderly individuals suffering from dementia, fugitives, stolen materials, and for marijuana eradication and other assignments.

SLED proposes to purchase a used, late model helicopter similar in mission capabilities to the two remaining helicopters it currently operates. The cost in the used market for an aircraft in this category is estimated at \$2 million. The purchase will be funded by insurance proceeds and other fund cash balances.

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**4. What is SFAA asked to do?**

Review and make recommendation to authorize in accordance with SC Code Section 1-11-405 acquisition of an additional helicopter by the South Carolina Law Enforcement Division.

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**5. What is the recommendation of the Department of Administration?**

As requested by the State Law Enforcement Division through the Department of Administration, Executive Budget Office, approve, in accordance with SC Code Section 1-11-405, the acquisition of an additional helicopter by the South Carolina Law Enforcement Division.

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**6. List of Supporting Documents:**

1. Section 1-11-405 of the South Carolina Code of Laws
2. South Carolina Law Enforcement Division memorandum dated July 11, 2019, regarding SLED Helicopter Procurement/Replacement



## South Carolina Law Enforcement Division

P.O. Box 21398  
Columbia, South Carolina  
29221-1398

*Henry D. McMaster, Governor*  
*Mark A. Keel, Chief*

*Tel: (803) 737-9000*

**Date:** July 10, 2019

**To:** Joint Bond Review Committee

**Re:** SLED-Helicopter Procurement/ Replacement

The S.C. Law Enforcement Division is the only state agency capable of providing 24-hour helicopter support to any municipal, county, state and federal agency in the state of South Carolina, as well as support for neighboring states, when requested.

1)

- A. In 2014, SLED owned four operable helicopters: one Bell UH-1H (1964) 10-passenger "rescue"/transport helicopter **N600SL**, three 2-passenger helicopters **N500SC** (1989), **N501SC**, an OH-6A, 2-passenger helicopter used in the Vietnam War, and **N502SL** (1987). That same year, SLED purchased **N504SL** upon approval from the JRBC and the SFAA.
- B. In January 2016, SLED relinquished **N600SL** to the federal government's military surplus program, due to rising maintenance costs and airframe safety issues due to the aircraft's age. **N600SL** was used for heavy lift operations such as air rescue capabilities, hoist and aerial water delivery in support of the S.C. Department of Natural Resources. SLED also relinquished **N501SC** back to the federal government as it was acquired through the military surplus program and had reached the end of its service life.
- C. On June 26, 2019, **N500SC** was involved in an incident at the Summerville airport resulting in a total loss of the aircraft.
- D. The SLED Aviation Unit currently owns two operable MD 500E model helicopters: **N502SL** and **N504SL**. The MD 500E model aircrafts are used primarily as an observation platform and have seating for two pilots and one to two passengers. They are equipped with infrared camera systems, searchlights, and microwave downlink systems.

2. SLED is challenged to maintain its current level of support with only two available aircraft. SLED is also unable to fulfill mission needs without the ability for personnel transport and heavy lift operations. An additional aircraft is necessary in order to ensure that aircraft are available while other aircraft are down for maintenance/inspection and/or in situations of multiple aviation missions to locate missing children, elderly individuals suffering from dementia, fugitives, stolen materials, marijuana eradication and other assignments. This would allow for the movement of assets rapidly across the state, more mission capabilities and additional assets available to the state during disasters relief efforts. An additional aircraft would also allow SLED to regain the mission capabilities with the loss of **N500SC** which occurred in 2019.
3. The SLED Aviation unit requests to purchase a used late model helicopter similar in mission capabilities to the MD helicopters currently operated by SLED. This will allow SLED to fill the mission needs that have been lost with the loss of **N500SC** in 2019. The approximate price range on the used market for an aircraft in this category is about \$2 million. The price may vary depending upon total time on the aircraft or time on major components that are due for service, replacement or overhaul. This type of airframe will allow SLED to serve the state of South Carolina and its partners with greater capability and efficiency.
4. SLED plans to utilize other fund cash balances to support the difference between the purchase price of the helicopter and the insurance payout.

South Carolina Code of Laws  
Title 1 - Administration of the Government  
Chapter 11 - Department of Administration

Section 1-11-405. Aircraft purchase, lease, or lease-purchase by state agency.

No aircraft may be purchased, leased, or lease-purchased for more than a thirty-day period by any state agency without the prior authorization of the Department of Administration or the State Fiscal Accountability Authority, as appropriate, and the Joint Bond Review Committee.



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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: Easements

The Department of Administration requests approval of the following easements in accordance with SC Code of Laws:

- (a) County Location: Charleston  
From: Department of Administration  
To: AT&T South Carolina  
Consideration: \$700  
Description/Purpose: To grant a 0.23 acre easement for the installation, operation and maintenance of two 4-inch conduits beneath Bohicket Creek at Bohicket Road on Johns Island. The easement is part of an overall project to improve the function of the public communication utility offered by AT&T. The term of the easement will be fifty (50) years. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.
  
- (b) County Location: Charleston  
From: Department of Administration  
To: AT&T South Carolina  
Consideration: \$806  
Description/Purpose: To grant a 1.53 acre easement for the installation, operation and maintenance of a 6-inch conduit beneath Sand Creek to accommodate SCDOT's SC-174 Bridge Replacement Project. The existing conduit is attached to the bridge and must be relocated before SCDOT can demolish the existing bridge. The term of the easement will be fifty (50) years. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.
  
- (c) County Location: Charleston  
From: Trident Technical College  
To: Commissioners of Public Works of the City of Charleston  
d/b/a Charleston Water System  
Consideration: \$1

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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: Easements

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Description/Purpose: To transfer title to water lines and appurtenances together with a 1.828 acre permanent easement for the purpose of ingress, egress, operation, reconstruction and maintenance of said lines on property of Trident Technical College's Main Campus in North Charleston. The 15 foot water easement will serve the new S.C. Aeronautical Training Center. The easement will contain the State's standard reverter language that if the easement holder ceases to use the easement for its intended purpose, it will terminate. The easement is being sought by Trident Technical College for the benefit of the property. The Division of Facilities Management and Property Services has determined that Trident Technical College has complied with the requirement of the statute in that the easement does not appear to materially impair the utility of the property or damage it.

- (d) County Location: Florence  
From: Department of Administration  
To: Duke Energy Progress, LLC  
Consideration: \$1  
Description/Purpose: To grant a permanent easement, together with the right of ingress and egress, for the purpose of constructing, reconstructing, operating, patrolling, maintaining, inspecting, repairing, replacing, relocating, adding, modifying and removing electric lines and facilities on property controlled by the Department of Mental Health (DMH) to provide service to the new State Veterans Nursing Home in Florence. The easement will contain the State's standard reverter language that if the easement holder ceases to use the easement for its intended purpose, it will terminate. The easement is being sought by DMH for the benefit of the property. The Division of Facilities Management and Property Services has determined that DMH has complied with the requirement of the statute in that the easement does not appear to materially impair the utility of the property or damage it.

- (e) County Location: Horry  
From: Department of Administration  
To: Ada L. Vallecorsa and Rita R. Ledford  
Consideration: \$700

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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: Easements

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Description/Purpose: To grant a 0.002 acre easement across uplands of the 43<sup>rd</sup> Avenue North canal (Canal H) in the Cherry Grove section of North Myrtle Beach where the bulkhead and fill material extends up to 18 feet beyond the property line for land owned by Vallecorsa and Ledford for the purpose of obtaining a permit to replace the existing dock and erosion control structure. The easement is being required by SCDHEC before the agency issues a dock permit as the landowners' property is not by definition waterfront. The term of the easement will be fifty (50) years. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.

(f) County Location: Charleston  
From: Department of Administration  
To: SEGRA  
Consideration: \$3,398.00  
Description/Purpose: To grant a 14.49 acre easement for the installation, operation and maintenance of fiber optic facilities beneath the Cooper River at Charlotte Street on the Charleston Peninsula. The easement is part of an overall project to improve SEGRA's telecommunications network serving the Charleston area. The term of the easement will be fifty (50) years. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.

(g) County Location: Charleston  
From: Department of Administration  
To: Dominion Energy Group  
Consideration: \$726  
Description/Purpose: To grant a 1.127 acre easement for the installation, operation and maintenance of an 8-inch steel gas main beneath Elliott Cut from Plymouth Avenue to South Edgewater Drive in Charleston. The transmission gas main will connect the West Ashley to James Island. The term of the easement will be fifty (50) years. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.

---

AUTHORITY ACTION REQUESTED:

Approve granting the referenced easements as recommended by the Department of Administration, Facilities Management and Property Services.

---

ATTACHMENTS: Agenda item worksheet and attachments

## STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

---

Meeting Scheduled for: August 13, 2019

Regular Agenda

---

**1. Submitted by:**

- (a) Agency: Department of Administration,  
Division of Facilities Management  
and Property Services
- (b) Authorized Official Signature:



Ashlie Lancaster, Director

---

**2. Subject:**

**EASEMENTS**

---

**3. Summary Background Information:**

The Department of Administration requests consideration of the following easements in accordance with SC Code of Laws:

- (a) County Location: Charleston  
From: Department of Administration  
To: AT&T South Carolina  
Consideration: \$700  
Description/Purpose: To grant a 0.23 acre easement for the installation, operation and maintenance of two 4-inch conduits beneath Bohicket Creek at Bohicket Road on Johns Island. The easement is part of an overall project to improve the function of the public communication utility offered by AT&T. The term of the easement will be fifty (50) years. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.
- (b) County Location: Charleston  
From: Department of Administration  
To: AT&T South Carolina  
Consideration: \$806  
Description/Purpose: To grant a 1.53 acre easement for the installation, operation and maintenance of a 6-inch conduit beneath Sand Creek to accommodate SCDOT's SC-174 Bridge Replacement Project. The existing conduit is attached to the bridge and must be relocated before SCDOT can demolish the existing bridge. The term of the easement will be fifty (50) years. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.



- (c) County Location: Charleston  
From: Trident Technical College  
To: Commissioners of Public Works of the City of Charleston  
d/b/a Charleston Water System  
Consideration: \$1  
Description/Purpose: To transfer title to water lines and appurtenances together with a 1.828 acre permanent easement for the purpose of ingress, egress, operation, reconstruction and maintenance of said lines on property of Trident Technical College's Main Campus in North Charleston. The 15 foot water easement will serve the new S.C. Aeronautical Training Center. The easement will contain the State's standard reverter language that if the easement holder ceases to use the easement for its intended purpose, it will terminate. The easement is being sought by Trident Technical College for the benefit of the property. The Division of Facilities Management and Property Services has determined that Trident Technical College has complied with the requirement of the statute in that the easement does not appear to materially impair the utility of the property or damage it.
- (d) County Location: Florence  
From: Department of Administration  
To: Duke Energy Progress, LLC  
Consideration: \$1  
Description/Purpose: To grant a permanent easement, together with the right of ingress and egress, for the purpose of constructing, reconstructing, operating, patrolling, maintaining, inspecting, repairing, replacing, relocating, adding, modifying and removing electric lines and facilities on property controlled by the Department of Mental Health (DMH) to provide service to the new State Veterans Nursing Home in Florence. The easement will contain the State's standard reverter language that if the easement holder ceases to use the easement for its intended purpose, it will terminate. The easement is being sought by DMH for the benefit of the property. The Division of Facilities Management and Property Services has determined that DMH has complied with the requirement of the statute in that the easement does not appear to materially impair the utility of the property or damage it.
- (e) County Location: Horry  
From: Department of Administration  
To: Ada L. Vallecorsa and Rita R. Ledford  
Consideration: \$700  
Description/Purpose: To grant a 0.002 acre easement across uplands of the 43<sup>rd</sup> Avenue North canal (Canal H) in the Cherry Grove section of North Myrtle Beach where the bulkhead and fill material extends up to 18 feet beyond the property line for land owned by Vallecorsa and Ledford for the purpose of obtaining a permit to replace the existing dock and erosion control structure. The easement is being required by SCDHEC before the agency issues a dock permit as the landowners' property is not by definition waterfront. The term of the easement will be fifty (50) years. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.

- (f) County Location: Charleston  
From: Department of Administration  
To: SEGRA  
Consideration: \$3,398.00  
Description/Purpose: To grant a 14.49 acre easement for the installation, operation and maintenance of fiber optic facilities beneath the Cooper River at Charlotte Street on the Charleston Peninsula. The easement is part of an overall project to improve SEGRA's telecommunications network serving the Charleston area. The term of the easement will be fifty (50) years. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.
- (g) County Location: Charleston  
From: Department of Administration  
To: Dominion Energy Group  
Consideration: \$726  
Description/Purpose: To grant a 1.127 acre easement for the installation, operation and maintenance of an 8-inch steel gas main beneath Elliott Cut from Plymouth Avenue to South Edgewater Drive in Charleston. The transmission gas main will connect the West Ashley to James Island. The term of the easement will be fifty (50) years. Consideration is \$500 plus \$200 per acre for easements across navigable waterways and submerged lands.
- 

**4. What is the Authority asked to do?** Approve the referenced easements.

---

**5. What is recommendation of the Department of Administration?** Consider approval of the referenced easements.

---

**6. List of Supporting Documents:**

1. SC Code of Laws Sections 1-11-80, 1-11-100 and 10-1-130
2. Exhibits (maps, plats, etc.)
  - (a) AT&T South Carolina
  - (b) AT&T South Carolina
  - (c) Commissioners of Public Works of the City of Charleston d/b/a Charleston Water System
  - (d) Duke Energy Carolinas, LLC
  - (e) Ada L. Vallecorsa and Rita R. Ledford
  - (f) SEGRA
  - (g) Dominion Energy Group

## **SOUTH CAROLINA CODE OF LAWS**

### **SECTION 1-11-80. Board authorized to grant easements for public utilities on vacant State lands.**

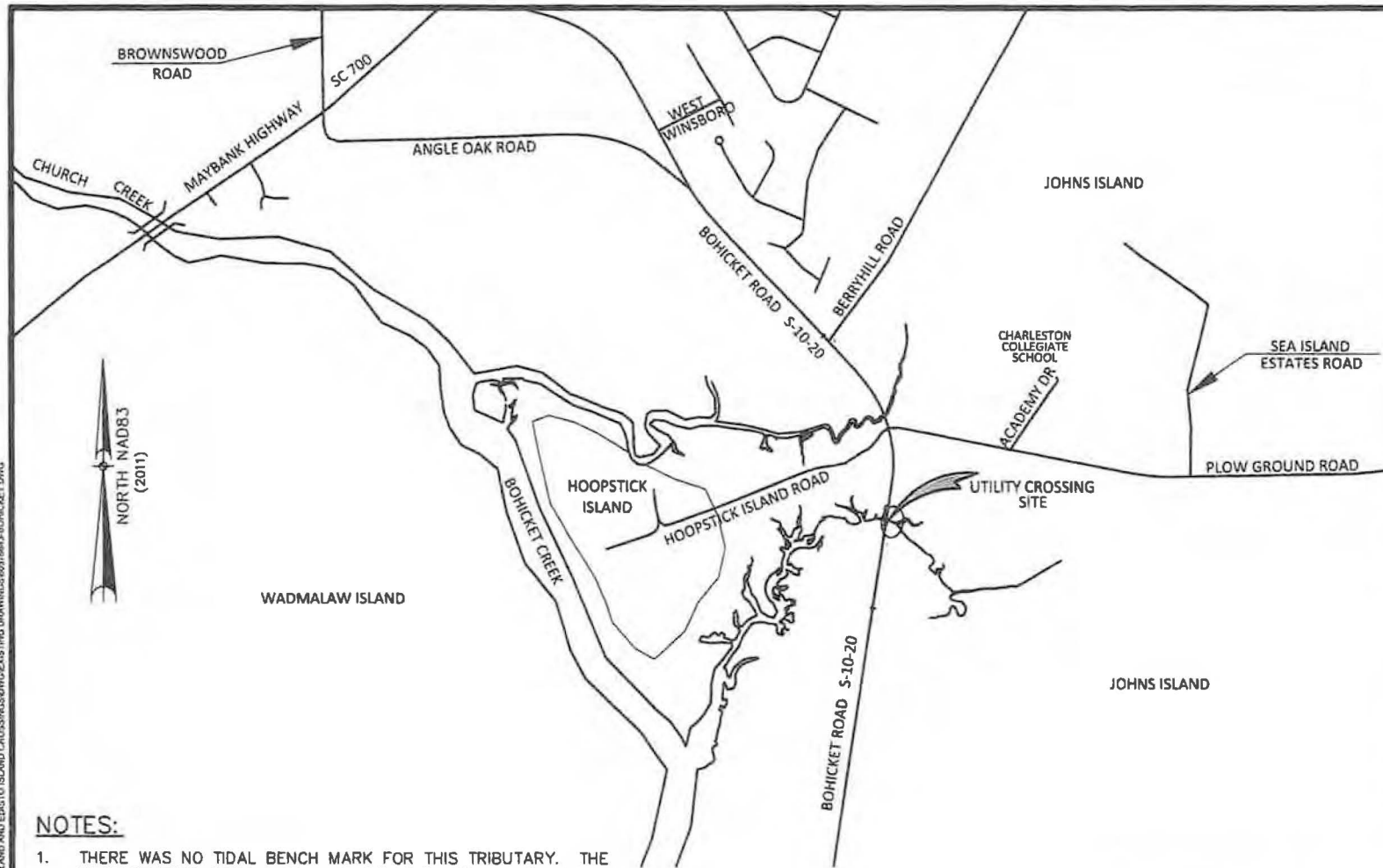
The Department of Administration, upon approval of the State Fiscal Accountability Authority, is authorized to grant easements and rights of way to any person for construction and maintenance of power lines, pipe lines, water and sewer lines and railroad facilities over, on or under such vacant lands or marshland as are owned by the State, upon payment of the reasonable value thereof.

### **SECTION 1-11-100. Execution of instruments conveying rights of way or easements over marshlands or vacant lands.**

Deeds or other instruments conveying such rights of way or easements over such marshlands or vacant lands as are owned by the State shall be executed by the Governor in the name of the State, when authorized by the Department of Administration, upon approval of the State Fiscal Accountability Authority, and when duly approved by the office of the Attorney General; deeds or other instruments conveying such easements over property in the name of or under the control of State agencies, institutions, commissions or other bodies shall be executed by the majority of the governing body thereof, shall name both the State of South Carolina and the institution, agency, commission or governing body as grantors, and shall show the written approval of the Director of the Department of Administration and the State Fiscal Accountability Authority.

### **SECTION 10-1-130. Grant of easements and rights of way.**

The trustees or governing bodies of state institutions and agencies may grant easements and rights of way over any property under their control, upon the recommendation of the Department of Administration and approval of the State Fiscal Accountability Authority, whenever it appears that such easements do not materially impair the utility of the property or damage it and, when a consideration is paid therefor, any amounts must be placed in the State Treasury to the credit of the institution or agency having control of the property involved.



LINE DATA		
LINE	LENGTH	DIRECTION
L1	11.24'	S9°13'17"E
L2	3.25'	S43°12'26"W
L3	13.42'	S14°45'47"E
L4	32.72'	S9°21'28"W
L5	8.63'	S1°19'02"E
L6	15.55'	S2°29'37"W
L7	2.68'	S15°03'55"E
L8	3.40'	S43°26'43"E
L9	2.13'	S5°42'45"W
L10	9.97'	S29°32'11"E
L12	36.42'	S8°26'32"W
L13	1.24'	N81°45'58"W
L14	6.95'	S80°39'05"W
L15	2.58'	S10°25'48"W
L16	25.08'	S14°35'26"W
L17	6.86'	S35°46'05"W
L18	10.58'	S31°36'52"W
L19	3.02'	S22°09'23"W
L20	16.58'	S8°15'29"W
L21	25.61'	S12°11'26"W

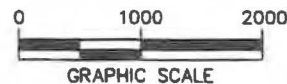
NOTE: L11 OMITTED

#### NOTES:

1. THERE WAS NO TIDAL BENCH MARK FOR THIS TRIBUTARY. THE NEAREST TIDAL BENCHMARK WAS 6.5 MILES UPSTREAM. THE MEAN HIGH WATER SHOWN HEREON WAS CALCULATED FROM:

Station	MHW (ft)	NAVD88 (ft)	MHW in NAVD88 (ft)
8666101, Johns Island, Church Creek, SC	7.06	4.35	2.71
8665763, Church Flats, Stono River, SC	6.60	2.64	2.64
7666131, Lower Toogoodoo Creek, SC	6.97	2.74	2.74
Project Site Calculation			2.80

2. SEE SHEET 2 FOR LINES THAT CORRESPOND WITH THE LINE TABLE ON THIS PAGE TABLE.



SCALE: 1"=1000'

**URS**

4016 Salt Pointe Parkway, Suite 200  
N. Charleston, South Carolina 29405  
Telephone (843) 767-4602 Fax (843) 767-4723  
www.AECOM.com

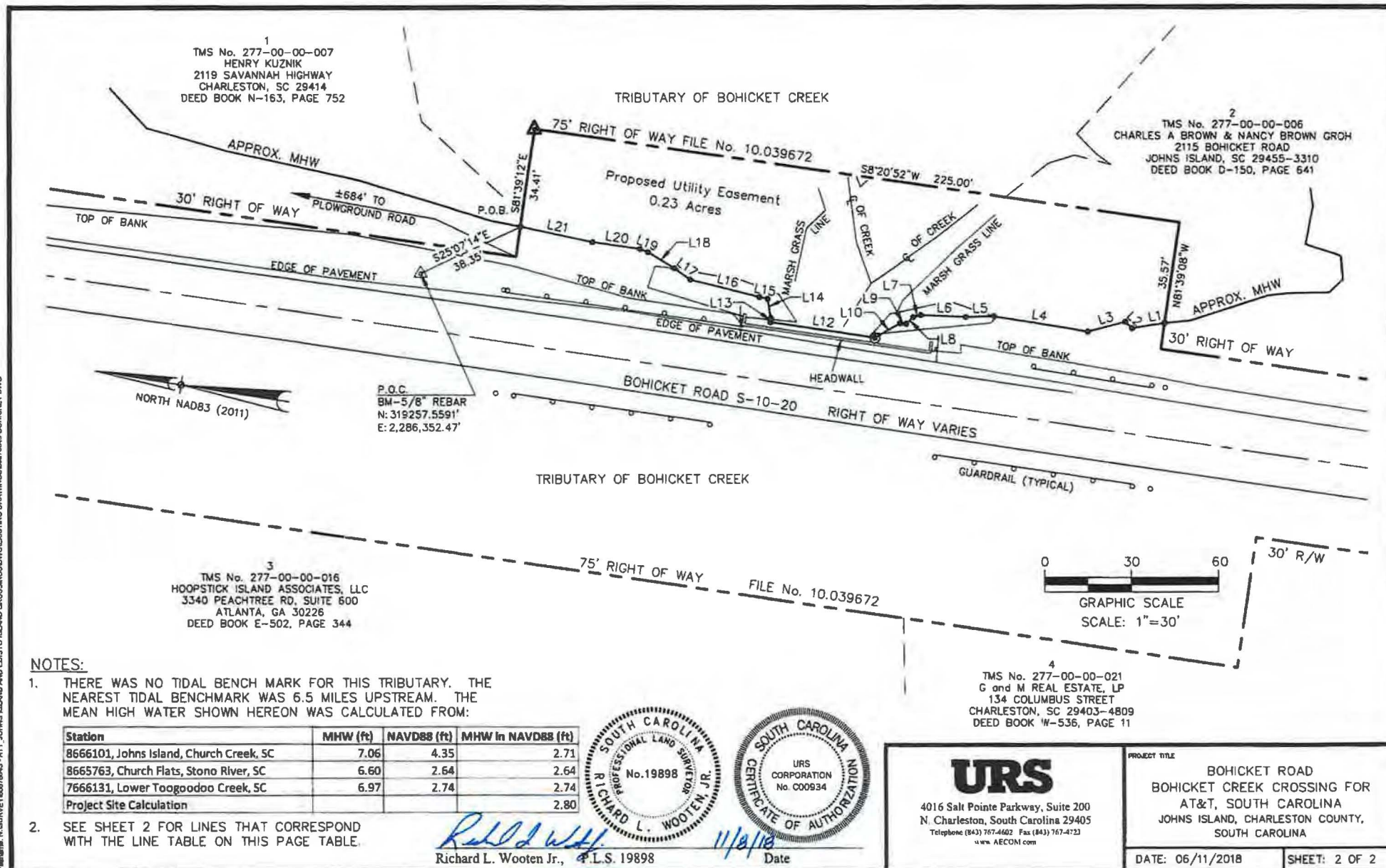
PROJECT TITLE

BOHICKET ROAD  
BOHICKET CREEK CROSSING FOR  
AT&T, SOUTH CAROLINA  
JOHNS ISLAND, CHARLESTON COUNTY,  
SOUTH CAROLINA

DATE: 06/11/2018

SHEET: 1 OF 2



$(a-2)$ 

(b-1)

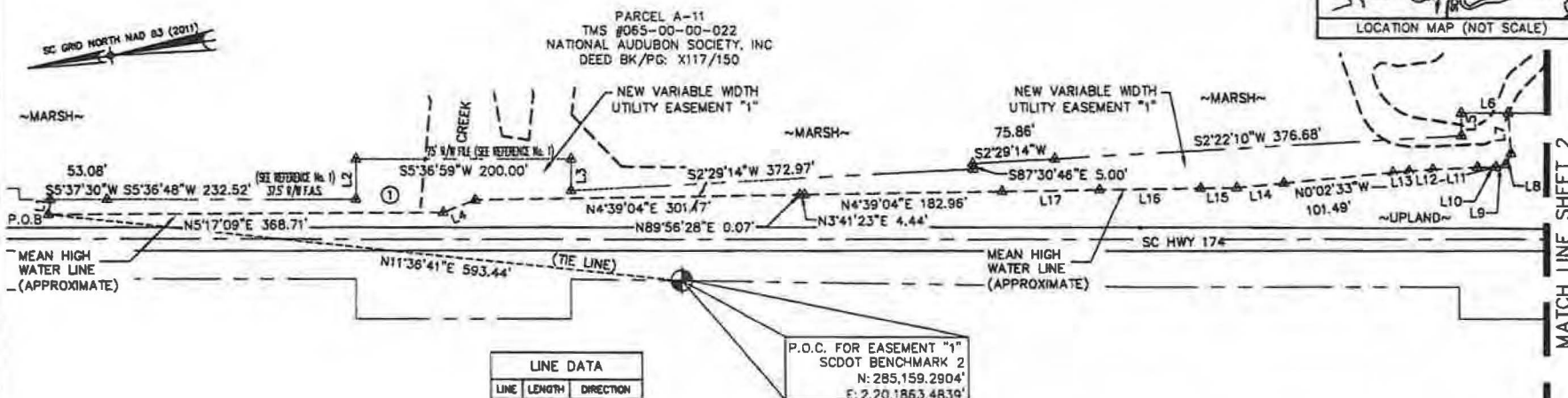
DRAWING NO. 06578643 ATT. JOHN ISLAND AND EDGTO ISLAND CROSSINGS/CONVEYING DRAWING/06578643 SAND CREEK AND EASELING

**LEGEND**

- NEW EASEMENT LINE  
 --- RIGHT OF WAY LINE  
 --- OBSERVABLE EDGE OF WATER (AT TIME OF SURVEY)  
 --- MEAN HIGH WATER LINE (APPROXIMATE)  
 --- TIE LINE  
 --- PROPERTY LINE  
 --- CENTERLINE OF ROAD  
 --- EDGE OF PAYMENT  
 Δ DENOTES CALCULATED POINT  
 MARSH

**EASEMENT AREA TABLE**

DESCRIPTION	AREA
NEW VARIABLE WIDTH UTILITY EASEMENT "1"	0.79 AC
NEW VARIABLE WIDTH UTILITY EASEMENT "2"	0.74 AC
<b>TOTAL EASEMENT AREA</b>	<b>1.53 AC</b>

**LINE DATA**

LINE	LENGTH	DIRECTION
L1	14.84	S78°30'31"E
L2	37.50	S84°23'01"E
L3	28.01	S84°23'01"E
L4	32.02	N18°18'22"W
L5	20.00	N84°42'25"W
L6	43.33	S5°25'43"W
L7	36.78	S88°38'32"E
L8	11.04	S57°58'01"E
L9	9.34	S9°00'58"E
L10	17.03	N4°34'11"E
L11	41.24	N3°08'18"E
L12	22.29	N1°38'45"E
L13	15.02	N0°42'24"E
L14	43.84	N0°03'32"W
L15	33.12	N4°47'50"E
L16	83.80	N4°42'07"E
L17	89.65	N4°39'04"E
L18	82.99	N4°38'04"E

**REFERENCES:**

- AN ELECTRONIC DRAWING OF SCDOT PROPOSED PLANS FOR CHARLESTON COUNTY FILE NO. 10.038057 PROJ: BR10(033) ROUTE SC-174 BRIDGE REPLACEMENT OVER SAND CREEK, DATED 02/02/2010
- DEED BOOK/PG: X117/150
- DEED BOOK/PG: E488/241

**NOTES:**

- THE CONTROL AND MEAN HIGH WATER SHOWN ON THE PLAT HAVE BEEN TAKEN FROM REFERENCE NUMBER 1 ABOVE.

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I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



RICHARD L. WOOTEN, JR., P.L.S. #19898

DATE 11/18/18

REVISION	DATE	BY

APPROVALS	DATE	BY

**URS**  
4016 Sull Pointe Parkway, Suite 200  
N Charleston, South Carolina 29405  
Tel: (843) 761-4700  
Fax: (843) 761-4701  
www.urscorp.com

SC HWY 174  
SAND CREEK EASEMENT  
FOR AT&T SOUTH CAROLINA  
LOCATED ON EDGTO ISLAND  
CHARLESTON COUNTY, SC

SOUTH CAROLINA  
DEPARTMENT OF  
ADMINISTRATION

FILE NO. 06578643

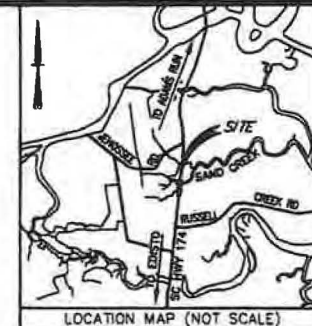


(6-2)

# LEGEND

- NEW EASEMENT LINE
- RIGHT OF WAY LINE
- OBSERVABLE EDGE OF WATER (AT TIME OF SURVEY)
- MEAN HIGH WATER LINE (APPROXIMATE)
- THE LINE
- PROPERTY LINE
- CENTERLINE OF ROAD
- EDGE OF PAVEMENT
- △ DENOTES CALCULATED POINT
- MARSH

EASEMENT AREA TABLE	
DESCRIPTION	AREA
NEW VARIABLE WIDTH UTILITY EASEMENT "1"	0.79 AC
NEW VARIABLE WIDTH UTILITY EASEMENT "2"	0.74 AC
TOTAL EASEMENT AREA	1.53 AC



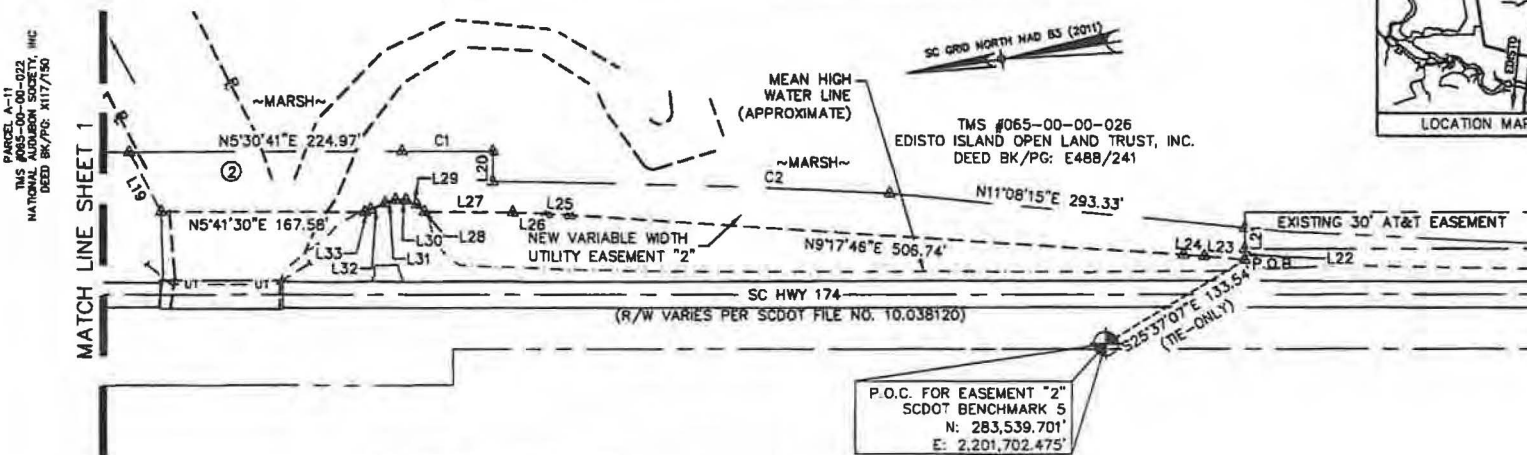
NO.	DATE	REVISION



**URS**  
4016 Salt Point Parkway, Suite 200  
N Charleston, South Carolina 29405  
Telephone (843) 551-5000 Fax (843) 741-4723  
www.urscorp.com

SC HWY 174  
SAND CREEK EASEMENT  
FOR AT&T CROSSING  
LOCATED ON EDISTO ISLAND  
CHARLESTON COUNTY, SC

SOUTH CAROLINA  
DEPARTMENT OF  
TRANSPORTATION  
FILE NO. 06576643



## REFERENCES:

- AN ELECTRONIC DRAWING OF SCDOT PROPOSED PLANS FOR CHARLESTON COUNTY FILE NO. 10.038067 PROJ.: BR10(033) ROUTE SC-174 BRIDGE REPLACEMENT OVER SAND CREEK. DATED 02/02/2010
- DEED BOOK/PG: X117/150
- DEED BOOK/PG: E488/241

## NOTES:

- THE CONTROL AND MEAN HIGH WATER SHOWN ON THE PLAT HAVE BEEN TAKEN FROM REFERENCE NUMBER 1

## COPYRIGHT NOTICE

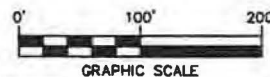
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## LINE DATA

LINE	LENGTH	DIRECTION
L19	55.90	N67°15'03"E
L20	25.00	S84°19'58"E
L21	17.26	N84°23'17"W
L22	8.98	S84°23'17"E
L23	33.26	N10°46'52"E
L24	17.10	N9°34'21"E
L25	18.77	S8°50'26"W
L26	28.65	N7°41'21"E
L27	72.56	N5°55'59"E
L28	8.86	N49°41'06"E
L29	9.77	N28°00'59"E
L30	8.59	N7°33'28"E
L31	9.00	N11°59'22"W
L32	13.08	N18°08'23"W
L33	5.25	N18°08'23"W

## CURVE DATA

CURVE	RADIUS	LENGTH	BEARING	CHORD	TANGENT	DELTA
C1	7715.00'	74.73	S05°45'53"W	74.73'	37.37'	0.55
C2	7880.00'	327.80	S07°15'48"W	327.75'	163.93'	2.44



I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



RICHARD L. WOOTEN, JR., P.L.S. 10898

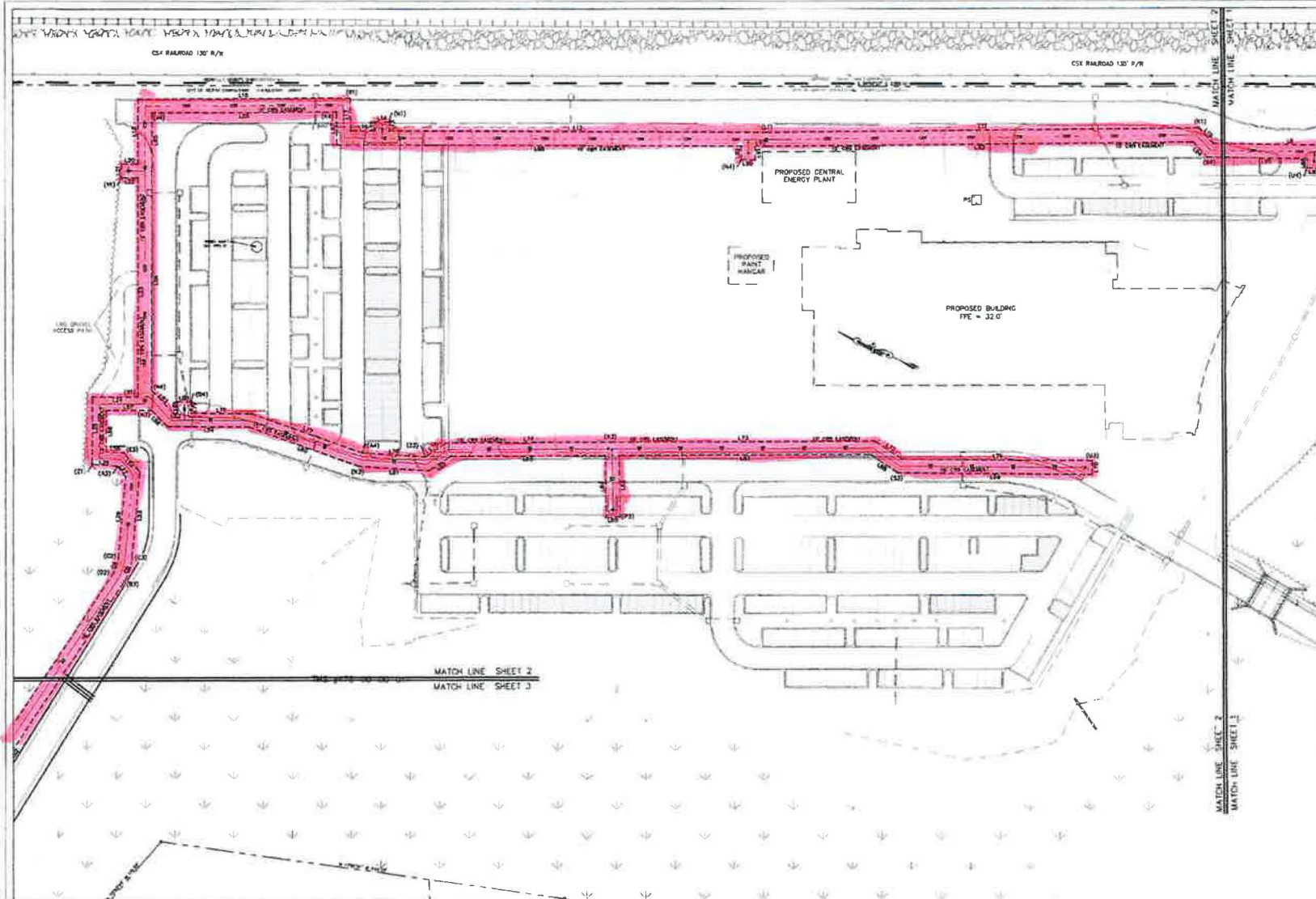
DATE 11/6/18

[illegible]

NEW 15' CWS WATER PASEMENT  
1.828 ACRES TOTAL (79638 sq. ft.)

CWS EASEMENT PLAT  
TRIDENT TECHNICAL COLLEGE  
SC AERONAUTICAL TRAINING CENTER  
TMS #478-00-00-011  
LOCATED IN THE CITY OF NORTH CHARLESTON  
CHARLESTON COUNTY, SOUTH CAROLINA  
OCTOBER 26, 2018  
SHEET 1 of 3





LINE TABLE		LINE TABLE	
LINE	WAVELENGTH	LINE	WAVELENGTH
L1	297.84	L62	66.91
L2	37.26	L63	66.93
L3	41.22	L64	66.94
L4	50.12	L65	66.95
L5	59.12	L66	66.96
L6	117.48	L67	72.78
L7	120.63	L68	72.79
L8	85.76	L69	66.97
L9	85.76	L70	66.98
L10	59.12	L71	66.99
L11	50.12	L72	66.99
L12	41.22	L73	66.99
L13	37.26	L74	66.99
L14	297.84	L75	66.99
L15	74.98	L76	66.99
L16	6.86	L77	66.99
L17	6.86	L78	66.99
L18	6.86	L79	66.99
L19	6.86	L80	66.99
L20	6.86	L81	66.99
L21	6.86	L82	66.99
L22	6.86	L83	66.99
L23	6.86	L84	66.99
L24	6.86	L85	66.99
L25	6.86	L86	66.99
L26	6.86	L87	66.99
L27	6.86	L88	66.99
L28	6.86	L89	66.99
L29	6.86	L90	66.99
L30	6.86	L91	66.99
L31	6.86	L92	66.99
L32	6.86	L93	66.99
L33	6.86	L94	66.99
L34	6.86	L95	66.99
L35	6.86	L96	66.99
L36	6.86	L97	66.99
L37	6.86	L98	66.99
L38	6.86	L99	66.99
L39	6.86	L100	66.99
L40	6.86	L101	66.99
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L51	6.86	L112	66.99
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L59	6.86	L120	66.99
L60	6.86	L121	66.99
L61	6.86	L122	66.99
L62	6.86	L123	66.99
L63	6.86	L124	66.99
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L67	6.86	L128	66.99
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L70	6.86	L131	66.99
L71	6.86	L132	66.99
L72	6.86	L133	66.99
L73	6.86	L134	66.99
L74	6.86	L135	66.99
L75	6.86	L136	66.99
L76	6.86	L137	66.99
L77	6.86	L138	66.99
L78	6.86	L139	66.99
L79	6.86	L140	66.99
L80	6.86	L141	66.99
L81	6.86	L142	66.99
L82	6.86	L143	66.99
L83	6.86	L144	66.99
L84	6.86	L145	66.99
L85	6.86	L146	66.99
L86	6.86	L147	66.99
L87	6.86	L148	66.99
L88	6.86	L149	66.99
L89	6.86	L150	66.99
L90	6.86	L151	66.

CURVE	LENGTH	RADIUS	DELTA	CHORD	CH. BEARS
ON	20.17	43.0	30°21'3"	16.69	58°33'4"
ON	27.85	30.47	39°58'0"	17.53	46°27'4"
ON	24.35	38.00	33°50'0"	15.80	52°52'4"

NEW 16' CWS WATER EASEMENT  
1.828 ACRES TOTAL (79838 sq. ft.)

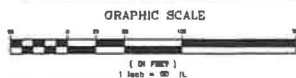
- REFERENCES:
- |              |            |      |     |
|--------------|------------|------|-----|
| 1. PLAT BOOK | EA         | PAGE | 077 |
| 2. PLAT BOOK | BT         | PAGE | 074 |
| 3. PLAT BOOK | CF         | PAGE | 442 |
| 4. PLAT BOOK | ED         | PAGE | 280 |
| 5. PLAT BOOK | EC         | PAGE | 351 |
| 6. PLAT BOOK | ED         | PAGE | PA  |
| 7. 1945      | 8478-00-00 |      |     |



HERESY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HERESY WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY, AS SPECIFIED THEREIN.

RAYMOND JAMES CRYSTAL, JR.  
 748 SE-HATFIELD DRIVE  
 CHASE ESTATES, S.C. 29412  
 R-40V (HAC) 778-8288

- NOTES:  
1. HORIZONTAL DATUM IS NAD 83 AND  
VERTICAL DATUM IS MVD 29 FOR THIS  
RECORD DRAINAGE.  
2. THE EASEMENT SHOWN HEREON IS BASED  
ON THE SURFACE LOCATIONS OF UTILITIES  
AND COMMENTS FROM THE ENGINEER OF  
RECORD ON THIS PROJECT.  
3. THE SURVEY SHOWN HEREON IS NOT THE  
RESULT OF A TITLE SEARCH BUT BASED ON  
THE LISTED REFERENCE DOCUMENTS AND  
DOCUMENTATION FOUND IN THE FIELD.  
4. THE REFERENCES LISTED HEREON ARE  
RECORDED IN THE CHARLESTON COUNTY  
REC. OFFICE.

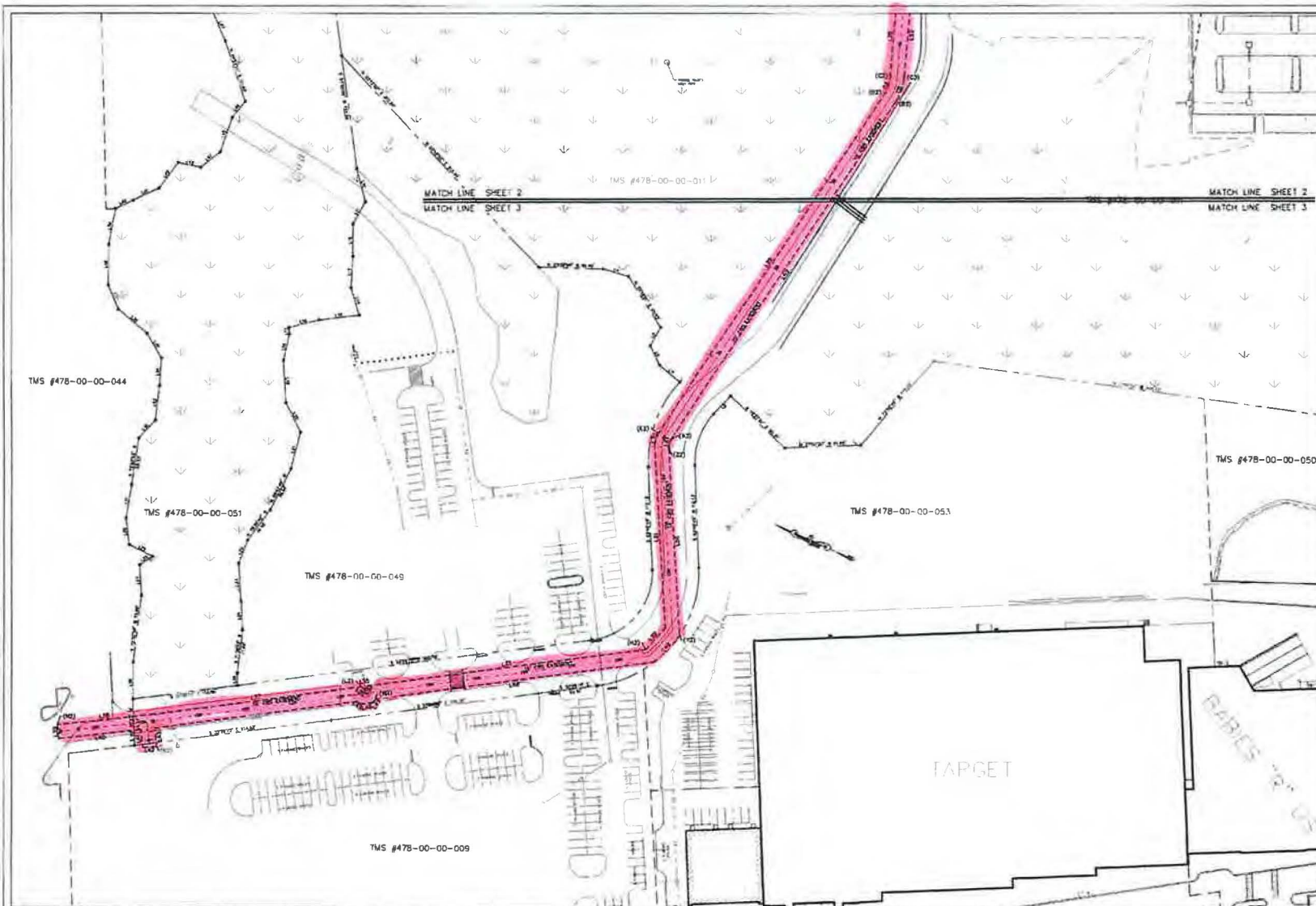


CWS EASEMENT PLAT  
TRIDENT TECHNICAL COLLEGE  
SC AERONAUTICAL TRAINING CENTER  
TMS #478-00-00-011  
LOCATED IN THE CITY OF NORTH CHARLESTON  
CHARLESTON COUNTY, SOUTH CAROLINA  
OCTOBER 26, 2018

OCTOBER 20,  
 SHEET 2 OF 2



(C-3)



LINE TABLE			LINE TABLE		
LINE	LENGTH	REMARKS	LINE	LENGTH	REMARKS
1	10.00	RIGHT-OF-WAY	101	10.00	RIGHT-OF-WAY
2	10.00	RIGHT-OF-WAY	102	10.00	RIGHT-OF-WAY
3	10.00	RIGHT-OF-WAY	103	10.00	RIGHT-OF-WAY
4	10.00	RIGHT-OF-WAY	104	10.00	RIGHT-OF-WAY
5	10.00	RIGHT-OF-WAY	105	10.00	RIGHT-OF-WAY
6	10.00	RIGHT-OF-WAY	106	10.00	RIGHT-OF-WAY
7	10.00	RIGHT-OF-WAY	107	10.00	RIGHT-OF-WAY
8	10.00	RIGHT-OF-WAY	108	10.00	RIGHT-OF-WAY
9	10.00	RIGHT-OF-WAY	109	10.00	RIGHT-OF-WAY
10	10.00	RIGHT-OF-WAY	110	10.00	RIGHT-OF-WAY
11	10.00	RIGHT-OF-WAY	111	10.00	RIGHT-OF-WAY
12	10.00	RIGHT-OF-WAY	112	10.00	RIGHT-OF-WAY
13	10.00	RIGHT-OF-WAY	113	10.00	RIGHT-OF-WAY
14	10.00	RIGHT-OF-WAY	114	10.00	RIGHT-OF-WAY
15	10.00	RIGHT-OF-WAY	115	10.00	RIGHT-OF-WAY
16	10.00	RIGHT-OF-WAY	116	10.00	RIGHT-OF-WAY
17	10.00	RIGHT-OF-WAY	117	10.00	RIGHT-OF-WAY
18	10.00	RIGHT-OF-WAY	118	10.00	RIGHT-OF-WAY
19	10.00	RIGHT-OF-WAY	119	10.00	RIGHT-OF-WAY
20	10.00	RIGHT-OF-WAY	120	10.00	RIGHT-OF-WAY
21	10.00	RIGHT-OF-WAY	121	10.00	RIGHT-OF-WAY
22	10.00	RIGHT-OF-WAY	122	10.00	RIGHT-OF-WAY
23	10.00	RIGHT-OF-WAY	123	10.00	RIGHT-OF-WAY
24	10.00	RIGHT-OF-WAY	124	10.00	RIGHT-OF-WAY
25	10.00	RIGHT-OF-WAY	125	10.00	RIGHT-OF-WAY
26	10.00	RIGHT-OF-WAY	126	10.00	RIGHT-OF-WAY
27	10.00	RIGHT-OF-WAY	127	10.00	RIGHT-OF-WAY
28	10.00	RIGHT-OF-WAY	128	10.00	RIGHT-OF-WAY
29	10.00	RIGHT-OF-WAY	129	10.00	RIGHT-OF-WAY
30	10.00	RIGHT-OF-WAY	130	10.00	RIGHT-OF-WAY
31	10.00	RIGHT-OF-WAY	131	10.00	RIGHT-OF-WAY
32	10.00	RIGHT-OF-WAY	132	10.00	RIGHT-OF-WAY
33	10.00	RIGHT-OF-WAY	133	10.00	RIGHT-OF-WAY
34	10.00	RIGHT-OF-WAY	134	10.00	RIGHT-OF-WAY
35	10.00	RIGHT-OF-WAY	135	10.00	RIGHT-OF-WAY
36	10.00	RIGHT-OF-WAY	136	10.00	RIGHT-OF-WAY
37	10.00	RIGHT-OF-WAY	137	10.00	RIGHT-OF-WAY
38	10.00	RIGHT-OF-WAY	138	10.00	RIGHT-OF-WAY
39	10.00	RIGHT-OF-WAY	139	10.00	RIGHT-OF-WAY
40	10.00	RIGHT-OF-WAY	140	10.00	RIGHT-OF-WAY
41	10.00	RIGHT-OF-WAY	141	10.00	RIGHT-OF-WAY
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43	10.00	RIGHT-OF-WAY	143	10.00	RIGHT-OF-WAY
44	10.00	RIGHT-OF-WAY	144	10.00	RIGHT-OF-WAY
45	10.00	RIGHT-OF-WAY	145	10.00	RIGHT-OF-WAY
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66	10.00	RIGHT-OF-WAY	166	10.00	RIGHT-OF-WAY
67	10.00	RIGHT-OF-WAY	167	10.00	RIGHT-OF-WAY
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76	10.00	RIGHT-OF-WAY	176	10.00	RIGHT-OF-WAY
77	10.00	RIGHT-OF-WAY	177	10.00	RIGHT-OF-WAY
78	10.00	RIGHT-OF-WAY	178	10.00	RIGHT-OF-WAY
79	10.00	RIGHT-OF-WAY	179	10.00	RIGHT-OF-WAY
80	10.00	RIGHT-OF-WAY	180	10.00	RIGHT-OF-WAY
81	10.00	RIGHT-OF-WAY	181	10.00	RIGHT-OF-WAY
82	10.00	RIGHT-OF-WAY	182	10.00	RIGHT-OF-WAY
83	10.00	RIGHT-OF-WAY	183	10.00	RIGHT-OF-WAY
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85	10.00	RIGHT-OF-WAY	185	10.00	RIGHT-OF-WAY
86	10.00	RIGHT-OF-WAY	186	10.00	RIGHT-OF-WAY
87	10.00	RIGHT-OF-WAY	187	10.00	RIGHT-OF-WAY
88	10.00	RIGHT-OF-WAY	188	10.00	RIGHT-OF-WAY
89	10.00	RIGHT-OF-WAY	189	10.00	RIGHT-OF-WAY
90	10.00	RIGHT-OF-WAY	190	10.00	RIGHT-OF-WAY
91	10.00	RIGHT-OF-WAY	191	10.00	RIGHT-OF-WAY
92	10.00	RIGHT-OF-WAY	192	10.00	RIGHT-OF-WAY
93	10.00	RIGHT-OF-WAY	193	10.00	RIGHT-OF-WAY
94	10.00	RIGHT-OF-WAY	194	10.00	RIGHT-OF-WAY
95	10.00	RIGHT-OF-WAY	195	10.00	RIGHT-OF-WAY
96	10.00	RIGHT-OF-WAY	196	10.00	RIGHT-OF-WAY
97	10.00	RIGHT-OF-WAY	197	10.00	RIGHT-OF-WAY
98	10.00	RIGHT-OF-WAY	198	10.00	RIGHT-OF-WAY
99	10.00	RIGHT-OF-WAY	199	10.00	RIGHT-OF-WAY
100	10.00	RIGHT-OF-WAY	200	10.00	RIGHT-OF-WAY

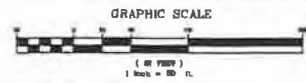
CURVE TABLE		
CURVE	LENGTH	REMARKS
1	10.00	RIGHT-OF-WAY
2	10.00	RIGHT-OF-WAY
3	10.00	RIGHT-OF-WAY
4	10.00	RIGHT-OF-WAY
5	10.00	RIGHT-OF-WAY
6	10.00	RIGHT-OF-WAY
7	10.00	RIGHT-OF-WAY
8	10.00	RIGHT-OF-WAY
9	10.00	RIGHT-OF-WAY
10	10.00	RIGHT-OF-WAY
11	10.00	RIGHT-OF-WAY
12	10.00	RIGHT-OF-WAY
13	10.00	RIGHT-OF-WAY
14	10.00	RIGHT-OF-WAY
15	10.00	RIGHT-OF-WAY
16	10.00	RIGHT-OF-WAY
17	10.00	RIGHT-OF-WAY
18	10.00	RIGHT-OF-WAY
19	10.00	RIGHT-OF-WAY
20	10.00	RIGHT-OF-WAY
21	10.00	RIGHT-OF-WAY
22	10.00	RIGHT-OF-WAY
23	10.00	RIGHT-OF-WAY
24	10.00	RIGHT-OF-WAY
25	10.00	RIGHT-OF-WAY
26	10.00	RIGHT-OF-WAY
27	10.00	RIGHT-OF-WAY
28	10.00	RIGHT-OF-WAY
29	10.00	RIGHT-OF-WAY
30	10.00	RIGHT-OF-WAY
31	10.00	RIGHT-OF-WAY
32	10.00	RIGHT-OF-WAY
33	10.00	RIGHT-OF-WAY
34	10.00	RIGHT-OF-WAY
35	10.00	RIGHT-OF-WAY
36	10.00	RIGHT-OF-WAY
37	10.00	RIGHT-OF-WAY
38	10.00	RIGHT-OF-WAY
39	10.00	RIGHT-OF-WAY
40	10.00	RIGHT-OF-WAY
41	10.00	RIGHT-OF-WAY
42	10.00	RIGHT-OF-WAY
43	10.00	RIGHT-OF-WAY
44	10.00	RIGHT-OF-WAY
45	10.00	RIGHT-OF-WAY
46	10.00	RIGHT-OF-WAY
47	10.00	RIGHT-OF-WAY
48	10.00	RIGHT-OF-WAY
49	10.00	RIGHT-OF-WAY
50	10.00	RIGHT-OF-WAY
51	10.00	RIGHT-OF-WAY
52	10.00	RIGHT-OF-WAY
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57	10.00	RIGHT-OF-WAY
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79	10.00	RIGHT-OF-WAY
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83	10.00	RIGHT-OF-WAY
84	10.00	RIGHT-OF-WAY
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88	10.00	RIGHT-OF-WAY
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92	10.00	RIGHT-OF-WAY
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95	10.00	RIGHT-OF-WAY
96	10.00	RIGHT-OF-WAY
97	10.00	RIGHT-OF-WAY
98	10.00	RIGHT-OF-WAY
99	10.00	RIGHT-OF-WAY
100	10.00	RIGHT-OF-WAY

NEW 15' CWS WATER EASEMENT  
1.828 ACRES TOTAL (79836 sq. ft.)

- REFERENCES:  
1. PLAT BOOK 64 PAGE 078  
2. PLAT BOOK 67 PAGE 074  
3. PLAT BOOK 67 PAGE 447  
4. PLAT BOOK 67 PAGE 292  
5. PLAT BOOK 67 PAGE 351  
6. PLAT BOOK 67 PAGE 648  
7. TMS #478-00-00



PATRICK D. ENELL  
748 SC-47776 2004  
2-648 PATON, S.C. 29412  
P-0011(842) 729-8258

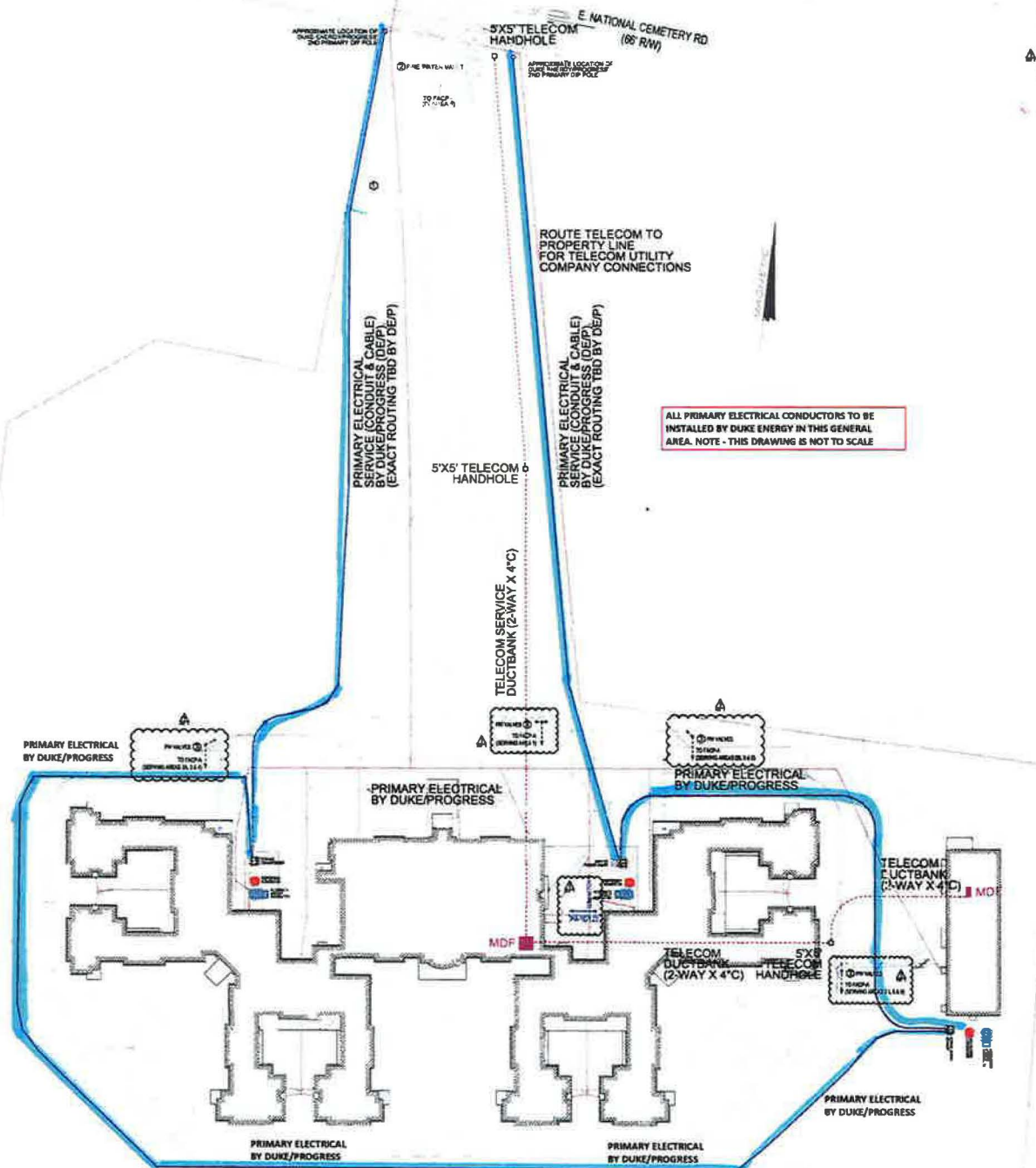


- NOTES:  
1. HORIZONTAL DATUM IS NAD 83 AND VERTICAL DATUM IS NAVD 83 FOR THIS RECORD DRAWING.  
2. THE EASEMENT SHOWN HEREON IS BASED ON THE SURFACE LOCATIONS OF UTILITIES AND CORNERS FROM THE CHARLOTTE COUNTY RECORD ON THIS PROJECT.  
3. THE SURVEY SHOWN HEREON IS NOT THE RESULT OF A FIELD SEARCH BUT BASED ON THE LISTED REFERENCE DOCUMENTS AND MONUMENTATION FOUND IN THE FIELD.  
4. THE REFERENCES LISTED HEREON ARE RECORDED IN THE CHARLOTTE COUNTY REC. OFFICE.



CWS EASEMENT PLAT  
TRIDENT TECHNICAL COLLEGE  
SC AERONAUTICAL TRAINING CENTER  
TMS #478-00-00-011  
LOCATED IN THE CITY OF NORTH CHARLESTON  
CHARLESTON COUNTY, SOUTH CAROLINA  
OCTOBER 26, 2018  
PAGE 3 OF 3

(d)



- KEYNOTES
- 1. PRIMARY ELECTRICAL SERVICE CONDUITS (IDEP) TO BE INSTALLED BY DUKE ENERGY.
  - 2. TELECOM SERVICE DUCTBANKS (IDEP) TO BE INSTALLED BY DUKE ENERGY.
  - 3. ALL PRIMARY ELECTRICAL CONDUCTORS TO BE INSTALLED BY DUKE ENERGY IN THIS GENERAL AREA. NOTE - THIS DRAWING IS NOT TO SCALE.

**S&W**

ARCHITECTURE  
ENGINEERING  
INTERIORS

STEVEN WILKINSON  
101 MAIN STREET, SUITE 100  
COLUMBIA, SC 29201

P: 803.763.4300 F: 803.763.4300  
WWW.STEVENWILKINSON.COM

**ER&A**

ER&A Ernst & Associates, P.C.  
Architecture and Planning  
807 Sage Ave. Towson, MD 21204

**DMH**

SOUTH CAROLINA  
STATE VETERANS  
NURSING HOME  
NORTHEAST REGION

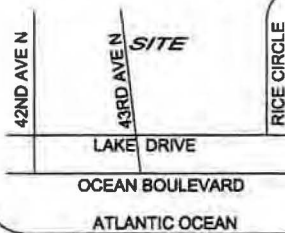
**ELECTRICAL SITE PLAN**

**E0.20**



(e)

### Vicinity Map Not To Scale



#### NOTES:

1. THIS SURVEY IS FOR PERMITTING PURPOSES ONLY.
2. OTHER UTILITIES MAY EXIST, BUT THEIR LOCATIONS ARE NOT KNOWN.
3. SURVEY SUBJECT TO FULL TITLE SEARCH
4. THIS PROPERTY MAY BE SUBJECT TO RIGHT OF WAYS, EASEMENTS OR RESTRICTIONS EITHER RECORDED OR IMPLIED
5. BUILDER/OWNER TO VERIFY COMPLIANCE ZONING, RESTRICTIVE COVENANTS OR HOMEOWNERS ASSOC. REQUIREMENTS OF RECORD

6. AREA COMPUTED BY COORDINATE GEOMETRY
7. R/W = RIGHT OF WAY
8. RBF = 1/2" IRON REBAR FOUND
9. CP = COMPUTED POINT
10. TAX# 145-02-09-003
11. COORDINATES ARE SC STATE PLANE (NAD 83)
12. PIN# 351-13-01-0059
13. ELEVATIONS NAVD 88, NOT FOR FEMA PURPOSES.
14. RBS = 5/8" IRON REBAR SET

15. NO MARSHGRASS IN AREA
16. HWM = HIGH WATER MARK (VISIBLE)
17. MHW = MEAN HIGH WATER @ (+/-) +2.0'
18. MLW = MEAN LOW WATER @ (+/-) -2.70'
19. FWD = FIXED WOODEN DOCK

I hereby state to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the minimum standards manual for the practice of land surveying in South Carolina, and meets or exceeds the requirements for a Class "A" survey as specified therein; that there are no visible encroachments or projections other than shown; that the unadjusted ratio of precision is 1:10,000+; that this property is subject to any easements of record that may be shown on an up-to-date title search not furnished me this date; that the area was determined by the coordinate method of area calculation. Date: OCTOBER 10 2018

SIGNED HARRY F. BRUTON  
PROFESSIONAL LAND SURVEYOR  
HARRY F. BRUTON, PLS 24275

LOT 5  
TAX# 145-02-09-002  
PIN# 351-13-01-0060  
N/F WILSON B. & JEAN R. EADDY  
DB.986 @ PG.312

LOT 4  
BLOCK "G-2"  
4,583 SQ.FT.  
0.10 ACRE

#306  
EXISTING IMPROVEMENTS  
NOT SHOWN

WOODEN  
BULKHEAD  
(FACE OF  
BULKHEAD IS  
CRITICAL LINE)

SALTWATER MARSH  
TAX# 131-00-04-021  
PIN# 351-00-00-0427  
N/F STATE OF SOUTH CAROLINA

FIBERGLASS  
BULKHEAD W/  
WOODEN CAP

TOP WALL: 4.2'

78 SQ.FT.

FIBERGLASS  
BULKHEAD W/  
CONCRETE CAP

LOT 8  
TAX# 145-02-09-011  
PIN# 351-13-01-0051

LOT 7  
TAX# 145-02-09-010  
PIN# 351-13-01-0052

LOT 6  
TAX# 145-02-09-009  
PIN# 351-13-01-0053

#### COORDINATE DATA

A	N 736367.33
B	E 2720579.40
C	N 736322.55
D	E 2720801.64
E	N 736361.19
F	E 2720679.44
G	N 736410.14
H	E 2720887.52
I	N 736406.28
J	E 2720671.64
K	N 736404.09
L	E 2720885.34
M	N 736392.98
N	E 2720684.75
O	N 736381.40
P	E 2720690.19
Q	N 736362.53
R	E 2720685.38

43RD AVENUE NORTH  
50' PUBLIC R/W

#### GRAPHIC SCALE



( IN FEET )  
1 inch = 20 ft.

Harry F. Bruton & Associates  
Professional Land Surveying & Design

RESIDENTAL & COMMERCIAL IN S.C.  
905-2 Sea Mountain Hwy.  
North Myrtle Beach, SC 29582

hbruton@gmail.com  
OFFICE (843) 281 - 8822  
FAX (843) 280 - 0920

#### AN OCRM PERMITTING SURVEY

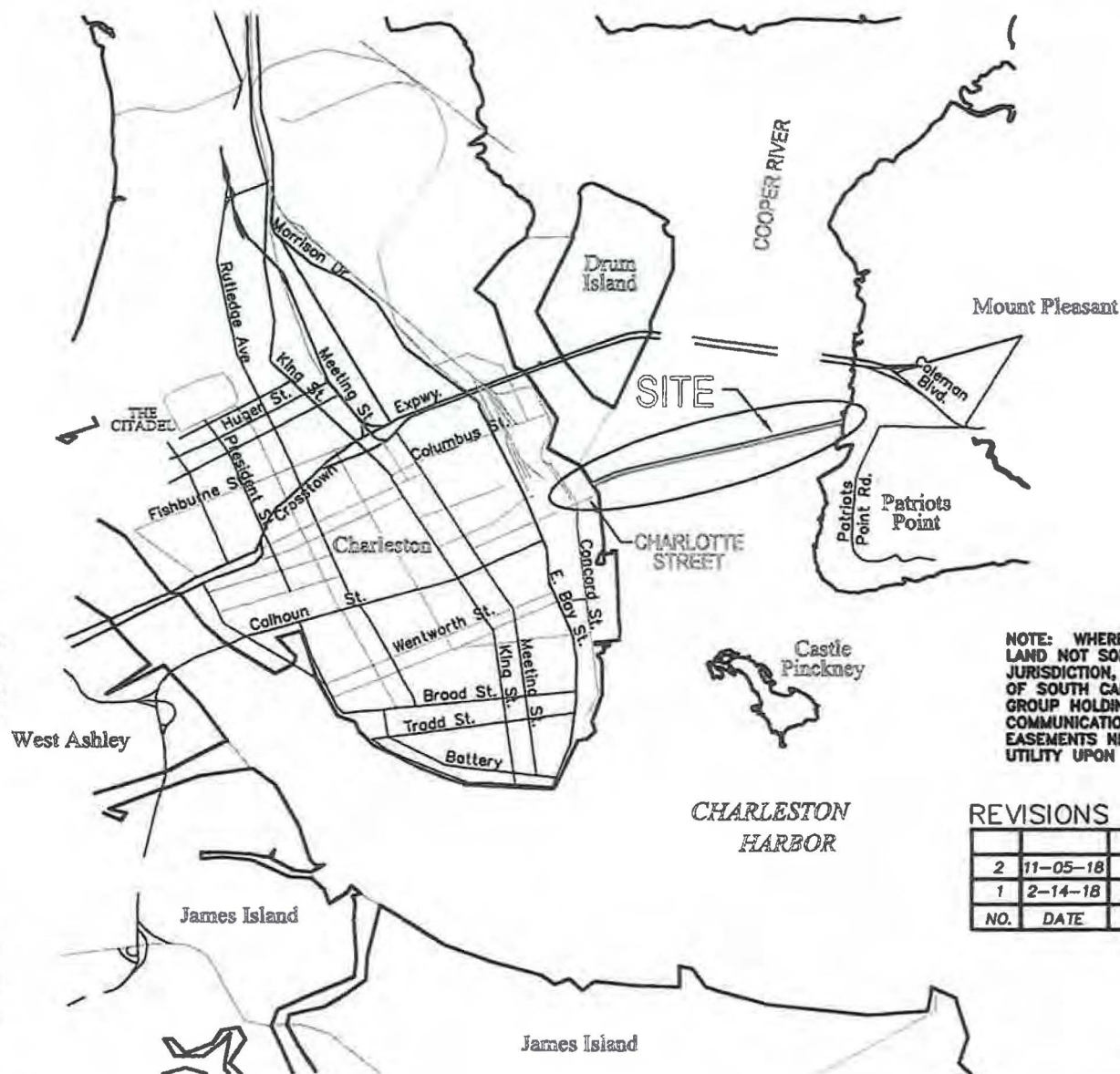
OF  
LOT 4, BLOCK "G-2"  
CHERRY GROVE BEACH SECTION

CITY OF NORTH MYRTLE BEACH, Horry County, SOUTH CAROLINA  
SCALE 1"=20'  
THE PROPERTY OF  
**RITA R. LEDFORD & ADA L. VALLECORSA**  
MAP REFERENCE IN BOOK 40 / 44 PAGE 124 / 54  
DEED REFERENCE IN BOOK 1810 PAGE 31  
JOB NO. 18205 ACAD: 308.43RD AVE N OCRM 10/05/2018



HARRY F. BRUTON  
S.C. REG.# 24275

(f-1)



NOTE: WHERE THE UTILITY CABLE CROSSES LAND NOT SOLELY UNDER FEDERAL OR STATE JURISDICTION, IT SHALL BE THE RESPONSIBILITY OF SOUTH CAROLINA TELECOMMUNICATIONS GROUP HOLDINGS LLC, d/b/a SPIRIT COMMUNICATIONS TO ACQUIRE ANY ADDITIONAL EASEMENTS NECESSARY TO CONSTRUCT THIS UTILITY UPON PRIVATE PROPERTY.

#### REVISIONS

NO.	DATE	DESCRIPTION	BY
2	11-05-18	REVISED TITLE BLOCK	RDB
1	2-14-18	REVISED OWNERS NAME	RDB

VICINITY MAP  
SHEET 1 OF 4

MAP SHOWING A 100' UTILITY EASEMENT CROSSING IN MT. PLEASANT THE COOPER RIVER AND ADJACENT MARSHLANDS CONTROLLED BY THE STATE OF SOUTH CAROLINA. PREPARED FOR SOUTH CAROLINA TELECOMMUNICATIONS GROUP HOLDINGS LLC, d/b/a SPIRIT COMMUNICATIONS BY ROBERT DAVID BRANTON, PLS DATED: MARCH 26, 2015

SCALE: N.T.S.

ROBERT DAVID BRANTON, PLS  
SC REG. NUMBER 11053



**CORNERSTONE**  
SURVEYING & ENGINEERING, INC.  
1240 Baccara Bridge Rd. • Summerville • South Carolina • 29485 • Phone: 843-871-9708

I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.



(f-2)

## LEGEND

- EASEMENT REFERENCE LINE/CENTERLINE ALIGNMENT  
----- FOR PROPOSED DIRECTIONAL DRILL  
----- PROPOSED UTILITY EASEMENT  
----- ADJACENT PROPERTY LINE  
----- APPROXIMATE LIMITS OF RIVER  
----- WOODLINE

- TOP OF BANK  
----- BOTTOM OF BANK  
MARSH  
TREE  
CALCULATED POINT (NO MONUMENT SET)  
MONUMENT FOUND (SIZE & TYPE)

CONTROL MONUMENT "CP-202"  
(SP Coordinates N 360,364.21', E 2,329,883.63', NAD  
83/2011) See "Important Note" hereon, "CP-202" being  
located within the right-of-way of Charlotte Street.  
Project Coordinates N 200,000.00', E 600,000.00'

## NAD 83 ('2011 ADJUSTMENT)

POINT	NORTHING	EASTING	LATITUDE	LONGITUDE
A	350,419.23	2,329,785.60	N 32°47'30.17"	W 079°55'36.46"
F	352,192.22	2,336,534.87	N 32°47'47.01"	W 079°54'17.18"

## LINE TABLE

COURSE	BEARING	DISTANCE
A-B	N 65°00'11" E	315.51'
B-C	N 65°00'11" E	377.65'
D-E	N 77°00'11" E	5318.94'
E-F	N 77°00'11" E	355.06'

## REVISIONS

NO.	DATE	DESCRIPTION	BY
2	11-05-18	REVISED TITLE BLOCK	RDB
1	2-14-18	UPDATE PARCEL DATA	RDB

RED BOUY

## CURVE DATA

CURVE C-D  
R=3,000.00' T=315.31'  
L=628.32' D=1°54'35" Rt.  
DELTA=12°00'00" Cd=627.17'  
Cb=N 71°00'11" E



100' UTILITY EASEMENT  
(14.49 ACRES), EASEMENT  
IS OFFSET 25' SOUTH AND  
75' NORTH FROM EASEMENT  
REFERENCE LINE.

PROPERTY OF  
**FERRY WHARF II, LLC**  
DEED BK./PG.: 0334/531  
PLAT CAB./PG.: L13/0188  
T.M.S. #517-00-00-126  
PARCEL 2-W

DETAIL 'B'  
SEE SHEET 4

END DRILL  
STA. 69+95.5

END PERMIT  
STA. 66+40.4

HIGHLAND

MARSH

PATRIOTS POINT  
ROAD

~TOWN OF MT. PLEASANT~

PROPERTY OF  
**PATRIOTS POINT  
DEVELOPMENT AUTHORITY**  
DEED BK./PG.: B104/363  
PLAT CAB./PG.: W/25  
T.M.S. #517-00-00-001

NOTE: WHERE THE UTILITY CABLE CROSSES  
LAND NOT SOLELY UNDER FEDERAL OR STATE  
JURISDICTION, IT SHALL BE THE RESPONSIBILITY  
OF SOUTH CAROLINA TELECOMMUNICATIONS  
GROUP HOLDINGS LLC, d/b/a SPIRIT  
COMMUNICATIONS TO ACQUIRE ANY ADDITIONAL  
EASEMENTS NECESSARY TO CONSTRUCT THIS  
UTILITY UPON PRIVATE PROPERTY.

SITE MAP  
SHEET 2 OF 4

MAP SHOWING A 100' UTILITY  
EASEMENT CROSSING IN MT. PLEASANT  
THE COOPER RIVER AND ADJACENT  
MARSHLANDS CONTROLLED BY THE  
STATE OF SOUTH CAROLINA.  
PREPARED FOR SOUTH CAROLINA  
TELECOMMUNICATIONS GROUP HOLDINGS  
LLC, d/b/a SPIRIT COMMUNICATIONS  
BY ROBERT DAVID BRANTON, PLS  
DATED: MARCH 26, 2015

SCALE: 1" = 800'

ROBERT DAVID BRANTON, PLS  
SC REG. NUMBER 11053

PROPERTY OF  
**SOUTH CAROLINA STATE PORTS AUTHORITY**  
**COLUMBUS STREET TERMINAL**

DEED BK./PG.: A279/632  
PLAT CAB./PG.: R/146  
T.M.S. #459-00-00-001

BEGIN PERMIT  
STA. 3+15.5

BEGIN DRILL  
STA. 0+00.0

GREEN BOUY

EASEMENT  
REFERENCE LINE

PROPERTY OF  
**BUTLER FAMILY LIMITED PARTNERSHIP**  
**IMAX THEATER AND RESTAURANT**

DEED BK./PG.: T236/870  
PLAT CAB./PG.: T/115  
T.M.S. #459-00-00-006

## IMPORTANT NOTE

THE STATE PLANE COORDINATE/BEARING CONTROL SYSTEM SHOWN ON THIS PLAT IS  
SOUTH CAROLINA STATE PLANE NORTH AMERICAN DATUM OF 1983 (2011 ADJUSTMENT),  
SOUTH CAROLINA LAMBERT ZONE 3900, UNITS IN INTERNATIONAL FEET.

TO PLACE THE BOUNDARIES SURVEYED AND SHOWN ON THIS MAP ON THE NAD 83 2011 ADJ.  
PLANE COORDINATE SYSTEM, ALL DISTANCES FOR THIS PROJECT SHOULD BE MULTIPLIED  
BY THE COMBINED SCALE FACTOR (0.9999150274), DERIVED AT CONTROL MONUMENT #202.

SCALE 1"=800'



I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF,  
THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE  
STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS  
THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

DETAIL 'A'  
SEE SHEET 3

~CITY OF CHARLESTON~



**CORNERSTONE**  
**SURVEYING & ENGINEERING, INC.**  
1240 Boone Bridge Rd. • Summerville • South Carolina • 29485 • Phone: 843-671-9706



(f-3)

# LEGEND

- EASEMENT REFERENCE LINE/CENTERLINE ALIGNMENT FOR PROPOSED DIRECTIONAL DRILL
- PROPOSED UTILITY EASEMENT
- ADJACENT PROPERTY LINE
- APPROXIMATE MEAN HIGH WATER LINE

- ⬆ MARSH
- ⊙ TREE
- △ CALCULATED POINT (NO MONUMENT SET)
- MONUMENT FOUND (SIZE & TYPE)

## NAD 83 ('2011 ADJUSTMENT)

POINT	NORTHING	EASTING	LATITUDE	LONGITUDE
A	350,419.23	2,329,785.60	N 32°47'30.17"	W 079°55'36.46"
F	352,192.22	2,336,534.87	N 32°47'47.01"	W 079°54'17.18"

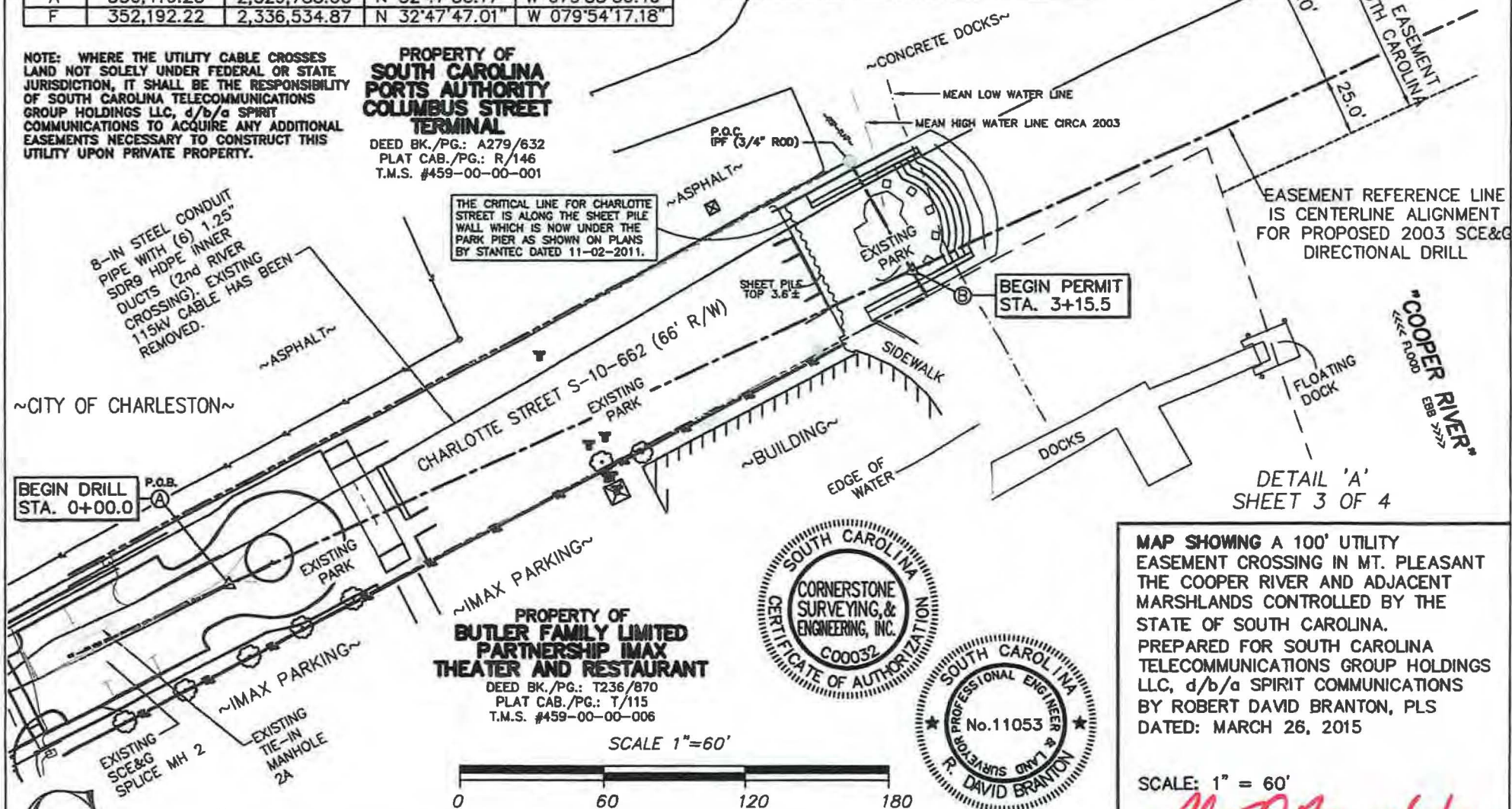
NOTE: WHERE THE UTILITY CABLE CROSSES LAND NOT SOLELY UNDER FEDERAL OR STATE JURISDICTION, IT SHALL BE THE RESPONSIBILITY OF SOUTH CAROLINA TELECOMMUNICATIONS GROUP HOLDINGS LLC, d/b/a SPIRIT COMMUNICATIONS TO ACQUIRE ANY ADDITIONAL EASEMENTS NECESSARY TO CONSTRUCT THIS UTILITY UPON PRIVATE PROPERTY.

**PROPERTY OF  
SOUTH CAROLINA  
PORTS AUTHORITY  
COLUMBUS STREET  
TERMINAL**  
DEED BK./PG.: A279/632  
PLAT CAB./PG.: R/146  
T.M.S. #459-00-00-001

THE CRITICAL LINE FOR CHARLOTTE STREET IS ALONG THE SHEET PILE WALL WHICH IS NOW UNDER THE PARK PIER AS SHOWN ON PLANS BY STANTEC DATED 11-02-2011.

## REVISIONS

NO.	DATE	DESCRIPTION	BY
2	11-05-18	REVISED TITLE BLOCK	RDB
1	2-14-18	UPDATE PARCEL DATA	RDB



**CORNERSTONE  
SURVEYING & ENGINEERING, INC.**  
1240 Bocons Bridge Rd. • Summerville • South Carolina • 29485 • Phone: 843-871-9706

I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

**MAP SHOWING A 100' UTILITY EASEMENT CROSSING IN MT. PLEASANT THE COOPER RIVER AND ADJACENT MARSHLANDS CONTROLLED BY THE STATE OF SOUTH CAROLINA. PREPARED FOR SOUTH CAROLINA TELECOMMUNICATIONS GROUP HOLDINGS LLC, d/b/a SPIRIT COMMUNICATIONS BY ROBERT DAVID BRANTON, PLS DATED: MARCH 26, 2015**

SCALE: 1" = 60'  
*Robert David Branton* 11/5/18  
BY ROBERT DAVID BRANTON, PLS  
SC REG. NUMBER 11053



(f-4)

# LEGEND

- \_\_\_\_\_ EASEMENT REFERENCE LINE/CENTERLINE ALIGNMENT  
 FOR PROPOSED DIRECTIONAL DRILL  
 \_\_\_\_\_ PROPOSED UTILITY EASEMENT  
 \_\_\_\_\_ ADJACENT PROPERTY LINE  
 \_\_\_\_\_ APPROXIMATE MEAN HIGH WATER LINE  
 ~~~~~ WOODLINE

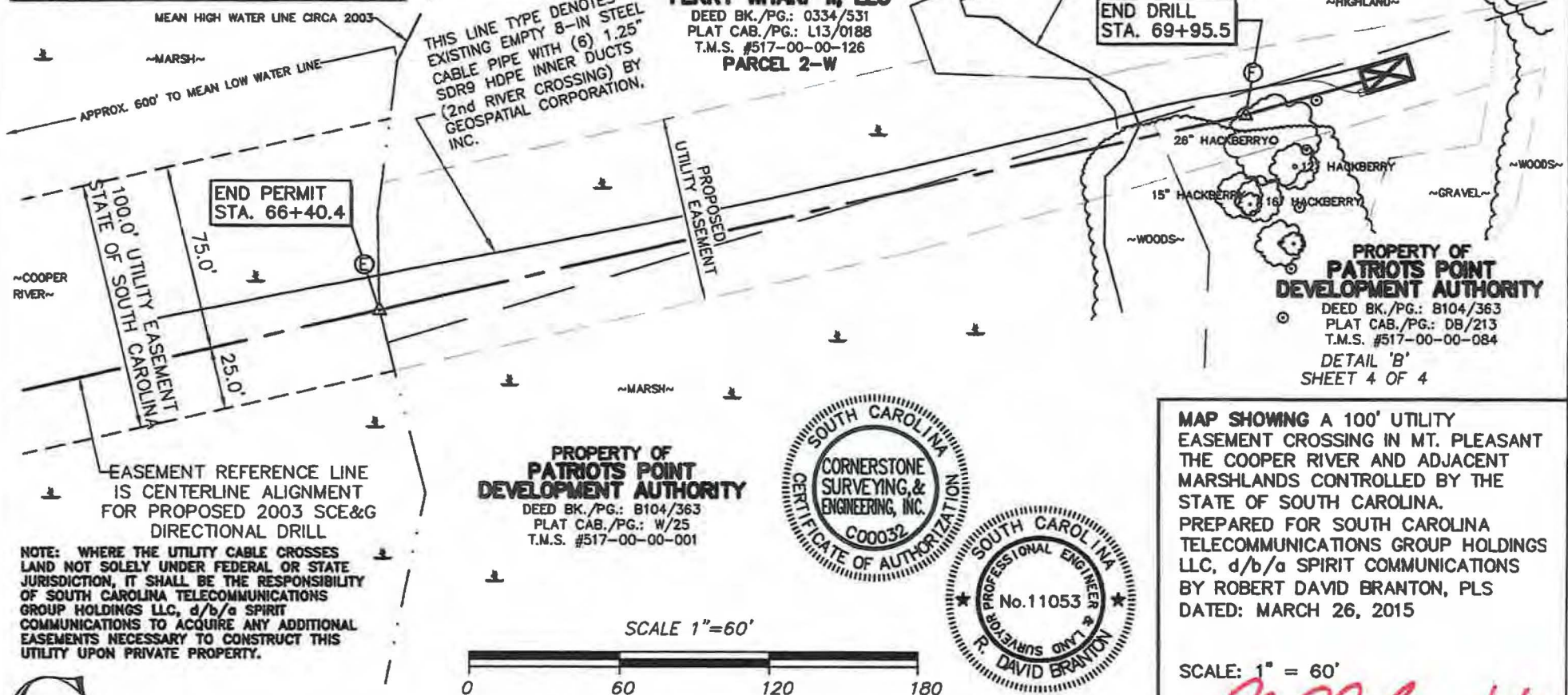
- ⬆ MARSH  
 ○ TREE  
 ▲ CALCULATED POINT (NO MONUMENT SET)  
 ● MONUMENT FOUND (SIZE & TYPE)

## NAD 83 ('2011 ADJUSTMENT)

| POINT | NORTHING   | EASTING      | LATITUDE       | LONGITUDE       |
|-------|------------|--------------|----------------|-----------------|
| A     | 350,419.23 | 2,329,785.60 | N 32°47'30.17" | W 079°55'36.46" |
| F     | 352,192.22 | 2,336,534.87 | N 32°47'47.01" | W 079°54'17.18" |

## REVISIONS

| NO. | DATE     | DESCRIPTION         | BY  |
|-----|----------|---------------------|-----|
| 2   | 11-05-18 | REVISED TITLE BLOCK | RDB |
| 1   | 2-14-18  | UPDATE PARCEL DATA  | RDB |



NOTE: WHERE THE UTILITY CABLE CROSSES LAND NOT SOLELY UNDER FEDERAL OR STATE JURISDICTION, IT SHALL BE THE RESPONSIBILITY OF SOUTH CAROLINA TELECOMMUNICATIONS GROUP HOLDINGS LLC, d/b/a SPIRIT COMMUNICATIONS TO ACQUIRE ANY ADDITIONAL EASEMENTS NECESSARY TO CONSTRUCT THIS UTILITY UPON PRIVATE PROPERTY.

**CORNERSTONE**  
SURVEYING & ENGINEERING, INC.  
1240 Beane Bridge Rd. • Summerville • South Carolina • 29485 • Phone: 843-871-9706

I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

MAP SHOWING A 100' UTILITY EASEMENT CROSSING IN MT. PLEASANT THE COOPER RIVER AND ADJACENT MARSHLANDS CONTROLLED BY THE STATE OF SOUTH CAROLINA. PREPARED FOR SOUTH CAROLINA TELECOMMUNICATIONS GROUP HOLDINGS LLC, d/b/a SPIRIT COMMUNICATIONS BY ROBERT DAVID BRANTON, PLS DATED: MARCH 26, 2015

SCALE: 1" = 60'

BY ROBERT DAVID BRANTON, PLS  
SC REG. NUMBER 11053

(f-5)

**Shawn McCarthy**  
Manager – Fiber and Transport  
Dominion Energy Southeast Services, Inc.  
220 Operation Way, MC B204, Cayce, SC 29033  
803-217-8686



**Ashlie Lancaster**  
Director, Division of Facilities Management and Property Services  
The South Carolina Department of Administration  
1200 Senate Street-Suite 600  
Columbia, SC 29201

**Re: Easement No. 702 between The State of South Carolina and South Carolina Electric & Gas Company, dated September 30<sup>th</sup>, 2003, recorded in Book Z471 at Page 493 relating to 115kv cable beneath the Cooper River ("Easement")**

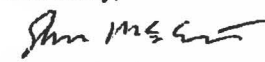
Dear Ashlie:

I am writing you at the request of the South Carolina Department of Administration. I am the Manager of Telecommunication for Dominion Energy South Carolina, Inc. f/k/a South Carolina Electric & Gas Company ("Dominion Energy").

Please be advised that no fiber was installed by Dominion Energy pursuant to the Easement and there is no fiber in the property that is the subject of the Easement.

If you should require additional information, please feel free to contact me or Jay Bressler.

Sincerely,

  
Shawn McCarthy



(f-6)

Reply to: Michael D. Baldwin  
SEGRA™ - Formerly Spirit Communications  
1500 Hampton Street  
Columbia, SC 29201  
803-726-4053  
mike.baldwin@segra.com

Ms. Ashlie Lancaster  
Director, Division of Facilities Management and Property Services  
The South Carolina Department of Administration  
1200 Senate Street, Suite 600, Columbia, SC 29201  
803-737-9822

Re: Cooper River Conduits

Dear Ashlie,

Regarding our current discussions surrounding the Cooper River conduit that Segra is attempting to use for its network construction plans in the Charleston, SC region, it is our belief and understanding that the conduits in question contain no fiber. Unless and until the state of South Carolina grants Segra the easement, Segra cannot pull fiber through the conduit for its telecommunications purposes. For this reason, Segra respectfully requests timely approval of its pending easement application.

We thank you for all of your time and effort in assisting us with this application. Please do not hesitate to contact me at your earliest convenience with any further questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael D. Baldwin".

Michael D. Baldwin

VP Business & Legal Affairs  
Segra  
1500 Hampton Street  
Columbia, SC 29201  
803-726-4053





## MATCHLINE

1. EXIST. BLDG. TO MAINTAIN PM 2 ONE. PROPOSED  
FURTHER IMPROVEMENT  
DATED 11/22/17  
BY ROBERT L. HENSON, S.C.A.S., NO. 13416
2. PM DB PM 737  
3. PM E PM 23  
4. PM DB PM 008  
5. PM DB PM 110  
6. PM AY PM 18  
7. PM CK PM 0087  
8. PM C PM 51



**SHEET 2 OF 2**

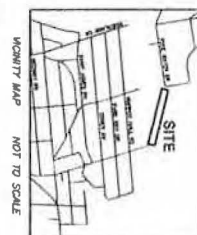


**ATLAS**  
SURVEYING CHS, INC.

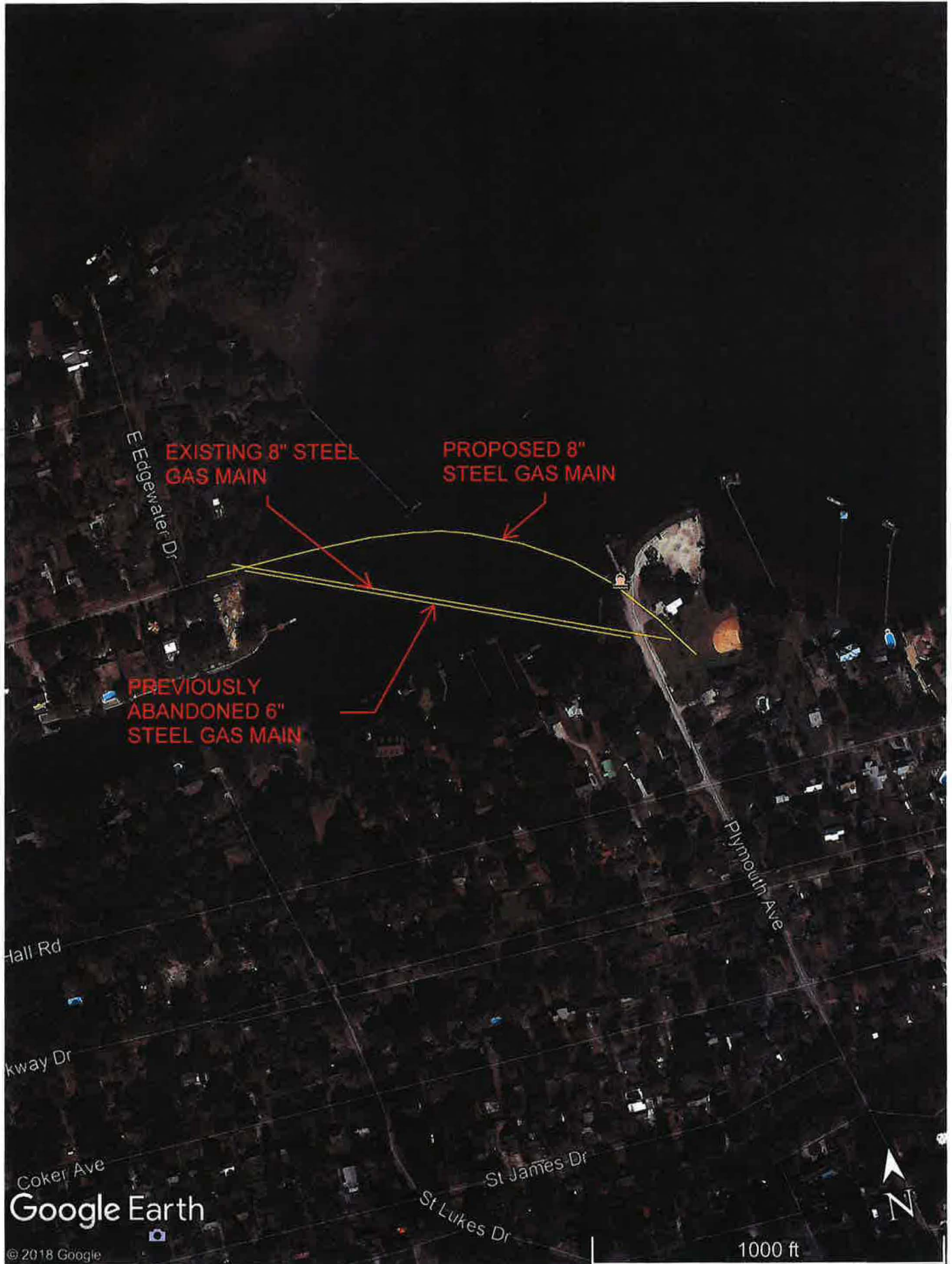
1. Identify existing data to the best of my knowledge, and explain, as fully as I can, the sources of the data and the methods used to collect the data. I will make a record of the data in a notebook, and I will make a record of the methods used to collect the data. I will make a record of the data in a notebook, and I will make a record of the methods used to collect the data.

507 DOMINION GAS EASEMENT  
PREPARED FOR SECTION 4 SUBSECTION  
JAMES ISLAND  
CHARLESTON COUNTY, SOUTH CAROLINA  
OFFICE NUMBER 104

OLIVER H. GRAY, JR.  
RCPLE No. 22744



VICINITY MAP NO. 10 SCALE





1. I have provided the easement plat for the new pipeline to be installed via horizontal directional drill. The easement plat shows the location of the proposed pipeline and the approximate location of the existing 8" steel gas main that was installed in the late 1990's. There are no records of the 6" steel gas main that was installed in the late 1960's that show the placement of the gas main or the alignment as it crosses Elliott Cut, therefore, we cannot show it on the plat. We know that it is located on the southwest side of the existing 8" gas main, and that knowledge allows us to design the new gas main with no conflict. I attach a drawing that shows the approximate locations of the previously abandoned 6" steel gas main, the existing 8" steel gas main and the proposed 8" steel gas main. Please see Weston & Sampson's response to the other 3 questions below:

**2. Can Dominion Energy repair and rehab the existing gas pipeline?**

Dominion Energy is currently trying to repair the existing gas main. They have begun excavating to the suspected location of the defect, which is approximately 12' below grade. It is possible that they will determine that the defect is irreparable, and the only solution is to replace the line under Elliott Cut. They will know in the coming weeks if they will be able to repair it. If they cannot repair the gas main, they will need to move forward immediately with replacing it and they will need to install the new gas main before cold weather starts. Cold weather is a term used in the natural gas industry and here in Charleston, the cold weather season typically begins mid-October. The demand for natural gas will increase as soon as the temperature decreases into the 50's and 60's.

There are only two natural gas feeder mains for James Island in Charleston: the existing 8" high pressure transmission main crossing Elliott Cut and a 6" low pressure plastic gas main. During cold weather, the low pressure 6" feeder CANNOT supply the natural gas required to feed James Island, and therefore, it is absolutely critical that the 8" gas main crossing Elliott Cut remain in service during cold weather months. The gas main will need to be taken out of service to make the necessary interconnection with the proposed HDD replacement gas main. Also, in the event that Dominion Energy is able to repair the existing gas main, they still need to move forward with the replacement gas main to provide redundancy for their system and to also be prepared if they should need to take the line out of service for any reason in the future.

**3. Why can't the pipeline be removed instead of retiring and abandoning the line in place?**

Horizontal Directional Drilling for an 8" steel pipeline going under a waterway such as this involves several steps. A drilling machine is set up and a hole is drilled into the ground in increasing diameter until the desired diameter is met (approximately 12" for an 8" steel pipe). As the hole is being drilled from upland to upland, steel pipe is being fused together to create one continuous pipe of 1,500 feet or so that can be pulled in one continuous motion into the borehole. It is critical that the pipe is pulled continuously through the hole to avoid the possibility that the hole will collapse. The process also has to be done quickly to avoid any settling of material around the pipe that will increase the friction forces that need to be overcome to pull the pipe through.

The earth has settled for decades over the existing pipelines, and there is no feasible or practical way to remove them. Even if there were a drill rig powerful enough to overcome the static friction forces caused by the lateral earth pressure on the pipe, the pipe itself is not structurally capable of withstanding the longitudinal stresses and strains that would occur and it would fail instantly.

**4. Does the abandoned pipeline pose a threat to the environment?**

The existing pipeline would not pose any threat to the environment if abandoned in place. It is common practice to dispose of concrete debris from bridges into marine environments to form aquatic habitats. This debris consists of rebar in concrete which is no different than a steel pipe wrapped in concrete. Concrete is made by combining natural materials. Aggregates (rocks, sand, or gravel) are combined with a binding material known as Portland cement. The cement is made mostly of lime and silica which is comprised of natural materials such as limestone, shells, clay, etc. Overtime, the saltwater and naturally occurring gases (CO<sub>2</sub>, oxygen, sulfur, etc.) will cause the concrete to break down. The cement will degrade to calcium carbonate (material that makes up oyster shells, crab shells, clam shells, etc.) and the aggregate will just be loose aggregate again. Once the concrete lining is gone the steel pipe will begin to rust. Rust is simply Iron Oxide which is naturally occurring in the environment. Iron oxide forms when ferrous materials are exposed to water and oxygen. Iron oxide is extremely common in sedimentary rock.

Since the existing pipe is buried deep underground it poses no threat to aquatic life and will likely pose no threat to any benthic organisms. It is common practice to push out residual natural gas in the pipeline with nitrogen prior to capping and abandoning. As mentioned earlier, the materials used to make up this pipeline are nothing different than any of the materials that are commonly used in marine waters to form artificial reefs and habitat.

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AGENCY: Department of Administration, Facilities Management and Property Services

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SUBJECT: Medical University of South Carolina Lease of 1786 Anthony Street – MUSC Motor Pool Facility

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The Medical University of South Carolina (MUSC) requests approval to lease space located at 1786 Anthony Street in Charleston commonly known as the MUSC Motor Pool Facility from the Charleston Neck Partners, LLC (“Landlord”) for a motor pool, including, among other things, office space and fenced parking for buses and vehicles.

Presently, MUSC leases 4,800 square feet from Landlord at 1786 Anthony Street at an annual cost of \$96,000.00, payable in equal monthly installments of \$8,000.00 at a rate of \$20.00 per rentable square feet. The lease is set to expire on November 30, 2019. Since originally leasing this space, the motor pool fleet has expanded and there are more employees necessitating the space requirement to increase from 4,800 SF to 6,800 SF to support additional bus drivers, support staff and a call center.

Two solicitations were conducted, in August 2018 and in March 2019. The incumbent Landlord was the only respondent for each solicitation. (State agencies were also contacted to verify that there was no adequate state space available.) The incumbent Landlord proposed constructing additional space to meet the needs of MUSC. The initial lease term will be ten years commencing on December 1, 2019 with two optional five-year extensions. The rent equates to \$29.50 per rentable square foot and includes the cost of the construction. The rental rate will be fixed for the first five years. The actual annual rate in the first year is dependent upon the completion date of the improvements. The rental rate increases ten percent in year 6. The total rent to be paid over the 10-year term is expected to be \$2,086,633.32 (based on the anticipated renovation completion date of April 1, 2020 [“Renovation Completion Date”] but will not exceed \$2,106,300.00 (if the renovations are completed early). In addition to rent, MUSC is responsible for the payment of its utility charges and fees, solid waste disposal fees, telephone service, ground maintenance, janitorial services and upkeep of areas paved with gravel (ROC) (not including the paved entrance ways from the street). MUSC estimates that these annual operating costs are \$21,000.

The rent includes full access and free use of the surrounding parking lot which has adequate parking for the fleet, staff and visitors and for which there is no additional cost. The Landlord will fit the space to MUSC’s specifications. The lease meets the state space standards with a density of 154 SF/person.



AGENCY: Department of Administration, Facilities Management and Property Services

SUBJECT: Medical University of South Carolina Lease of 165 Cannon Street Surface Lot

Assuming the improvements are completed by the Renovation Completion Date, the rent over the term of the lease is as follows:

| <u>INITIAL<br/>TERM</u>         | <u>PERIOD: FROM -<br/>TO</u> | <u>ANNUAL<br/>RENT</u>     | <u>MONTHLY<br/>RENT</u> | <u>RENT PER<br/>SF<br/>(ROUNDED)</u> |
|---------------------------------|------------------------------|----------------------------|-------------------------|--------------------------------------|
| YEAR 1<br>1 portion 4<br>months | 12/01/2019 -<br>3/31/2020    | \$47,200.00                | \$11,800.00             | \$ 29.50                             |
| YEAR 1<br>portion 8<br>months   | 4/1/2020 -<br>11/30/2020     | \$133,733.36               | \$16,716.67             | \$ 29.50                             |
| YEAR 2                          | 12/10/2020 -<br>11/30/2021   | \$200,600.04               | \$16,716.67             | \$ 29.50                             |
| YEAR 3                          | 12/10/2021 -<br>11/30/2022   | \$200,600.04               | \$16,716.67             | \$ 29.50                             |
| YEAR 4                          | 12/10/2022 -<br>11/30/2023   | \$200,600.04               | \$16,716.67             | \$ 29.50                             |
| YEAR 5                          | 12/10/2023 -<br>11/30/2024   | \$200,600.04               | \$16,716.67             | \$ 29.50                             |
| YEAR 6                          | 12/10/2024 -<br>11/30/2025   | \$220,659.96               | \$18,388.33             | \$ 32.45                             |
| YEAR 7                          | 12/10/2025 -<br>11/30/2026   | \$ 220,659.96              | \$18,388.33             | \$ 32.45                             |
| YEAR 8                          | 12/10/2026 -<br>11/30/2027   | \$ 220,659.96              | \$18,388.33             | \$ 32.45                             |
| YEAR 9                          | 12/10/2027 -<br>11/30/2028   | \$ 220,659.96              | \$ 18,388.3<br>3        | \$ 32.45                             |
| YEAR 10                         | 12/10/2028 -<br>11/30/2029   | \$ 220,659.96              | \$18,388.33             | \$ 32.45                             |
| <b>Total for 10 years</b>       |                              | <b>\$2,086,633.3<br/>2</b> |                         |                                      |
| <b>Average for 10 years</b>     |                              | <b>\$208,663.33</b>        | <b>\$17388.61</b>       | <b>\$30.98</b>                       |



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AGENCY: Department of Administration, Facilities Management and Property Services

---

SUBJECT: Medical University of South Carolina Lease of 165 Cannon Street Surface Lot

---

Comparables of similar state agency and commercial space leases in the Charleston area are as follows:

| Agency/Location                     | Rate/SF |
|-------------------------------------|---------|
| Department of Insurance King Street | \$29.47 |
| MUSC West Edge                      | \$36.00 |
| Clemson East Bay                    | \$36.39 |

MUSC has adequate funds for the lease according to a Budget Approval Form submitted May 15, 2019, which also includes a multi-year plan. If MUSC desires to exercise the lease options, it will seek approval of those options at that time. Lease payments will be made from MUSC's parking revenue fund. No option to purchase the property is included in the lease. The lease was approved by MUSC Board of Trustees at its May 17, 2019 meeting and by the Commission on Higher Education on June 6, 2019. Joint Bond Review Committee approved this lease at its meeting of July 30, 2019.

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**AUTHORITY ACTION REQUESTED:**

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As recommended by the Department of Administration, Facilities Management and Property Services, approve the proposed ten-year lease for space located at 1786 Anthony Street in Charleston commonly known as the MUSC Motor Pool Facility from the Charleston Neck Partners, LLC for a motor pool, including, among other things, office space and fenced parking for buses and vehicles as proposed by the Department of Administration, Facilities Management and Property Services.

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**ATTACHMENTS:**

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Agenda item worksheet; Letter from MUSC dated June 3, 2019; SC Code of Laws Sections 1-11-55 and 1-11-56

## STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

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Meeting Scheduled for: August 13, 2019

Regular Agenda

---

**1. Submitted by:**

- (a) Agency: Department of Administration
- (b) Authorized Official Signature:



Ashlie Lancaster, Director

---

**2. Subject:** Medical University of South Carolina Lease of 1786 Anthony Street – MUSC Motor Pool Facility

---

**3. Summary Background Information:**

The Medical University of South Carolina (MUSC) requests approval to lease space located at 1786 Anthony Street in Charleston commonly known as the MUSC Motor Pool Facility from the Charleston Neck Partners, LLC ("Landlord") for a motor pool, including, among other things, office space and fenced parking for buses and vehicles.

Presently, MUSC leases 4,800 square feet from Landlord at 1786 Anthony Street at an annual cost of \$96,000.00, payable in equal monthly installments of \$8,000.00 at a rate of \$20.00 per rentable square feet. The lease is set to expire on November 30, 2019. Since originally leasing this space, the motor pool fleet has expanded and there are more employees necessitating the space requirement to increase from 4,800 SF to 6,800 SF to support additional bus drivers, support staff and a call center.

Two solicitations were conducted, in August 2018 and in March 2019. The incumbent Landlord was the only respondent for each solicitation. (State agencies were also contacted to verify that there was no adequate state space available.) The incumbent Landlord proposed constructing additional space to meet the needs of MUSC. The initial lease term will be ten years commencing on December 1, 2019 with two optional five-year extensions. The rent equates to \$29.50 per rentable square foot and includes the cost of the construction. The rental rate will be fixed for the first five years. The actual annual rate in the first year is dependent upon the completion date of the improvements. The rental rate increases ten percent in year 6. The total rent to be paid over the 10-year term is expected to be \$2,086,633.32 (based on the anticipated renovation completion date of April 1, 2020 ["Renovation Completion Date"]) but will not exceed \$2,106,300.00 (if the renovations are completed early). In addition to rent, MUSC is responsible for the payment of its utility charges and fees, solid waste disposal fees, telephone service, ground maintenance, janitorial services and upkeep of areas paved with gravel (ROC) (not including the paved entrance ways from the street). MUSC estimates that these annual operating costs are \$21,000.

The rent includes full access and free use of the surrounding parking lot which has adequate parking for the fleet, staff and visitors and for which there is no additional cost. The Landlord will fit the space to MUSC's specifications. The lease meets the state space standards with a density of 154 SF/person.

Assuming the improvements are completed by the Renovation Completion Date, the rent over the term of the lease is as follows:

| <u>INITIAL<br/>TERM</u>     | <u>PERIOD: FROM - TO</u> | <u>ANNUAL<br/>RENT</u> | <u>MONTHLY<br/>RENT</u> | <u>RENT PER SF<br/>(ROUNDED)</u> |
|-----------------------------|--------------------------|------------------------|-------------------------|----------------------------------|
| YEAR 1 portion<br>4 months  | 12/01/2019 - 3/31/2020   | \$47,200.00            | \$11,800.00             | \$ 29.50                         |
| YEAR 1 portion<br>8 months  | 4/1/2020 - 11/30/2020    | \$133,733.36           | \$16,716.67             | \$ 29.50                         |
| YEAR 2                      | 12/10/2020 - 11/30/2021  | \$200,600.04           | \$16,716.67             | \$ 29.50                         |
| YEAR 3                      | 12/10/2021 - 11/30/2022  | \$200,600.04           | \$16,716.67             | \$ 29.50                         |
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| YEAR 8                      | 12/10/2026 - 11/30/2027  | \$ 220,659.96          | \$18,388.33             | \$ 32.45                         |
| YEAR 9                      | 12/10/2027 - 11/30/2028  | \$ 220,659.96          | \$ 18,388.33            | \$ 32.45                         |
| YEAR 10                     | 12/10/2028 - 11/30/2029  | \$ 220,659.96          | \$18,388.33             | \$ 32.45                         |
| <b>Total for 10 years</b>   |                          | <b>\$2,086,633.32</b>  |                         |                                  |
| <b>Average for 10 years</b> |                          | <b>\$208,663.33</b>    | <b>\$17388.61</b>       | <b>\$30.98</b>                   |

Comparables of similar state agency and commercial space leases in the Charleston area are as follows:

| Agency/Location                     | Rate/SF |
|-------------------------------------|---------|
| Department of Insurance King Street | \$29.47 |
| MUSC West Edge                      | \$36.00 |
| Clemson East Bay                    | \$36.39 |

MUSC has adequate funds for the lease according to a Budget Approval Form submitted May 15, 2019, which also includes a multi-year plan. If MUSC desires to exercise the lease options, it will seek approval of those options at that time. Lease payments will be made from MUSC's parking revenue fund. No option to purchase the property is included in the lease. The lease was approved by MUSC Board of Trustees at its May 17, 2019 meeting and by the Commission on Higher Education on June 6, 2019. Joint Bond Review Committee approved this lease at its meeting of July 30, 2019.

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4. What is the Authority asked to do? Approve the proposed ten-year lease.

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5. What is recommendation of the Division of Facilities Management and Property Services? Approval of the proposed ten-year lease.

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6. List of Supporting Documents:

- (a) Letter from MUSC dated June 3, 2019
- (b) SC Code of Laws Sections 1-11-55 and 1-11-56



Office of Space Management Support  
28 Ehrhardt Street, MSC 205  
Charleston, SC 29425  
843-792-5996

June 3, 2019

Ashlie Lancaster  
Innovations Director  
Office of the Executive Director  
Department of Administration  
1200 Senate Street, Suite 460  
Columbia, SC 29201

RE: 1786 Anthony Street / Lease Renewal Request [UPDATE]

Dear Ms. Lancaster:

The Medical University of South Carolina (MUSC) request to extend the lease agreement for the MUSC Motor Transportation Pool located at 1786 Anthony Street. In conjunction with the extension MUSC also request to expand the square footage leased at this location. This expansion is necessary to accommodate the growth since 2000 which includes; additional bus drivers, support staff and a new call center. A solicitation was conducted in August 2018 and again in March 2019; attached is the repose MUSC accepts for their lease extension.

The MUSC Board of Trustees will review this lease for approval on May 17, 2019. CHE approval was received at its May 30<sup>th</sup> meeting. MUSC request JBRC review for approval at their July 2019 meeting and SFAA review for approval at their August 2019 meeting.

Extension Lease Term:

|                 |                                                                                                      |
|-----------------|------------------------------------------------------------------------------------------------------|
| Lease Term:     | 10 Years                                                                                             |
| Renewal Option: | 2 Two Terms, 5 Years                                                                                 |
| Square Footage: | 6,800                                                                                                |
| Lease Type:     | Modified                                                                                             |
|                 | Landlord – taxes, insurance, building maintenance including room, ext walls, parking lot, foundation |
|                 | Tenant – utilities, janitorial                                                                       |
| Cost per SF:    | \$29.50                                                                                              |
| Increase:       | 10%, Year 6                                                                                          |
| Annual Rent:    | \$200,600                                                                                            |

Please let me know if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rachel Jones", is written over the printed name.

Rachel Jones  
Medical University of South Carolina  
Leasing Manager



**SECTION 1-11-55. Leasing of real property for governmental bodies.**

(1) "Governmental body" means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive branch of this State. Governmental body excludes the General Assembly, Legislative Council, the Legislative Services Agency, the judicial department and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts.

(2) The Division of General Services of the Department of Administration is hereby designated as the single central broker for the leasing of real property for governmental bodies. No governmental body shall enter into any lease agreement or renew any existing lease except in accordance with the provisions of this section. However, a technical college, with the approval by the State Board for Technical and Comprehensive Education, and a public institution of higher learning, may enter into any lease agreement or renew any lease agreement up to one hundred thousand dollars annually for each property or facility.

(3) When any governmental body needs to acquire real property for its operations or any part thereof and state-owned property is not available, it shall notify the Division of General Services of its requirement on rental request forms prepared by the division. Such forms shall indicate the amount and location of space desired, the purpose for which it shall be used, the proposed date of occupancy and such other information as General Services may require. Upon receipt of any such request, General Services shall conduct an investigation of available rental space which would adequately meet the governmental body's requirements, including specific locations which may be suggested and preferred by the governmental body concerned. When suitable space has been located which the governmental body and the division agree meets necessary requirements and standards for state leasing as prescribed in procedures of the department as provided for in subsection (5) of this section, General Services shall give its written approval to the governmental body to enter into a lease agreement. All proposed lease renewals shall be submitted to General Services by the time specified by General Services.

(4) The department shall adopt procedures to be used for governmental bodies to apply for rental space, for acquiring leased space, and for leasing state-owned space to nonstate lessees.

(5) Any participant in a property transaction proposed to be entered who maintains that a procedure provided for in this section has not been properly followed, may request review of the transaction by the Director of the Division of General Services of the Department of Administration or his designee.

HISTORY: 1997 Act No. 153, Section 2; 2002 Act No. 333, Section 1; 2002 Act No. 356, Section 1, Pt VI.P(1); 2011 Act No. 74, Pt VI, Section 13, eff August 1, 2011; 2013 Act No. 31, Section 1, eff May 21, 2013; 2014 Act No. 121 (S.22), Pt V, Section 7.A, eff July 1, 2015.

Code Commissioner's Note

The last sentence in subsection (2), which was added by 2011 Act No. 74, was inadvertently omitted from 2014 Act No. 121 due to a scrivener's error. At the direction of the Code Commissioner, this sentence has been retained in subsection (2).

#### Effect of Amendment

The 2011 amendment, in subsection (2), added the third sentence relating to technical colleges.

The 2013 amendment, in subsection (1), substituted "Legislative Services Agency" for "Office of Legislative Printing, Information and Technology Systems".

2014 Act No. 121, Section 7.A, in subsection (1), substituted "agency, government corporation, or other establishment or official of the executive branch" for "legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branches"; in subsection (2), substituted "Division of General Services of the Department of Administration" for "Budget and Control Board"; in subsection (3) substituted "division" for "office" in three instances, and substituted "department" for "board"; in subsection (4), substituted "department" for "board"; and in subsection (5), substituted "Division of General Services of the Department of Administration" for "Office of General Services".

#### **SECTION 1-11-56. Program to manage leasing; procedures.**

(A) The Division of General Services of the Department of Administration, in an effort to ensure that funds authorized and appropriated for rent are used in the most efficient manner, is directed to develop a program to manage the leasing of all public and private space of a governmental body. The department must submit regulations for the implementation of this section to the General Assembly as provided in the Administrative Procedures Act, Chapter 23, Title 1. The department's regulations, upon General Assembly approval, shall include procedures for:

- (1) assessing and evaluating agency needs, including the authority to require agency justification for any request to lease public or private space;
- (2) establishing standards for the quality and quantity of space to be leased by a requesting agency;
- (3) devising and requiring the use of a standard lease form (approved by the Attorney General) with provisions which assert and protect the state's prerogatives including, but not limited to, a right of cancellation in the event of:
  - (a) a nonappropriation for the renting agency;
  - (b) a dissolution of the agency; and

- (c) the availability of public space in substitution for private space being leased by the agency;
  - (4) rejecting an agency's request for additional space or space at a specific location, or both;
  - (5) directing agencies to be located in public space, when available, before private space can be leased;
  - (6) requiring the agency to submit a multiyear financial plan for review by the department with copies sent to Ways and Means Committee and Senate Finance Committee, before any new lease for space is entered into; and
  - (7) requiring prior review by the Joint Bond Review Committee and the requirement of State Fiscal Accountability Authority approval before the adoption of any new or renewal lease that commits more than two hundred thousand dollars annually in rental or lease payments or more than one million dollars in such payments in a five-year period.
- (B) Leases or rental agreements involving amounts below the thresholds provided in subsection (A)(7) may be executed by the Department of Administration without this prior review by the Joint Bond Review Committee and approval by the State Fiscal Accountability Authority.
- (C) The threshold requirements requiring review by the Joint Bond Review Committee and approval by the State Fiscal Accountability Authority as contained in subsection (A)(7) also apply to leases or rental agreements with nonstate entities whether or not the state or its agencies or departments is the lessee or lessor.

HISTORY: 1997 Act No. 153, Section 2; 2014 Act No. 121 (S.22), Pt V, Section 7.B, eff July 1, 2015.

#### Effect of Amendment

2014 Act No. 121, Section 7.B, added subsection designator (A); in subsection (A), substituted "Division of General Services of the Department of Administration" for "State Budget and Control Board", substituted "a governmental body" for "state agencies", and added the second sentence relating to regulations; in subsection (A)(6), substituted "department" for "board's budget office", and deleted text relating to prior review by the Joint Bond Review Committee; rewrote subsection (A)(7); and added subsections (B) and (C) .

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AGENCY: Department of Mental Health

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SUBJECT: Request for Approval to Pay Three Employees Amounts under \$10,000 each  
For a Violation of the Fair Labor Standards Act (FLSA)

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The Department is seeking approval to pay liquidated damages that are under \$10,000 to three employees totaling \$12,129.22. These liquidated damages were assessed by the USDOL as part of a settlement agreement. The SC Tort Policy does not cover these kinds of settlements.

In its licensed hospitals and nursing homes, the Department is required to maintain certain staffing levels of nursing personnel to ensure adequate care of patients and residents. Due to the significant number of nursing vacancies, like most hospitals and nursing homes, DMH inpatient facilities have become heavily reliant on using supplemental staffing. In 2018 alone, our nursing overtime costs averaged over \$182,000 monthly. During the same time period, costs for nursing staff through private staffing agencies averaged \$460,000 monthly. In some cases, DMH employed nurses supplemented their income by working part time for private nurse staffing agencies. Some of these private agencies were the very ones with whom the Department was contracting.

Several employees filed a complaint with the US Department of Labor (USDOL) alleging that they, when working in a DMH facility through a private nurse staffing agency, were entitled to overtime pursuant to the Fair Labor Standards Act (FLSA). An investigation by USDOL determined that when assigned to a DMH facility by their private employer the nurses were frequently doing the same or similar jobs as their DMH jobs. USDOL concluded that the Department was in violation of the FLSA and that the employees should have been paid overtime.

DMH was mandated to pay the back wages at the time-and-one-half rate, less a credit for the amounts the employees received from their private employer. Additionally, USDOL assessed liquidated damages in an amount equal to the unpaid overtime for each employee. By agreeing to the settlement, the Department will be able to avoid additional penalties.



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AGENCY: Department of Mental Health

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SUBJECT: Request for Approval to Pay Three Employees Amounts under \$10,000 each  
for a Violation of the Fair Labor Standards Act (FLSA)

The Department originally came before the SFAA at its June 2017 meeting and received approval to pay back wages and liquidated damages to 77 employees in the amount of \$586,238.48. At that time, we were unaware there were any additional wages owed to employees in this class. Upon further review and inquiry, it was discovered that three additional employees were due back wages and liquidated damages totaling \$24,258.44

Subsequent to the action by USDOL, the Department has instituted measures to prevent the practice of DMH employed nurses who choose to work part time for a private temporary nurse staffing agency being assigned to work in a DMH facility.

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AUTHORITY ACTION REQUESTED:

Approve the Department of Mental Health's request to pay liquidated damages in the amount of \$12,129.22 as part of a settlement agreement with the US Department of Labor for violation of the Fair Labor Standards Act.

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ATTACHMENTS:

Agenda item worksheet; USDOL letter notifying SCDMH of onsite visit (October 7, 2015); USDOL letter of findings/violations (February 22, 2017); USDOL Disbursement instructions; Spreadsheet of employees with liquidated damages that are under \$10,000; Agreement and release between SCDMH and affected employees; Avant 8/2/19 letter; Regulation 19-718.11


## STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

Meeting Scheduled for: \*  
August 13, 2019

Regular Agenda

1. Submitted by:

- (a) Agency: SC Department of Mental Health
- (b) Authorized Official Signature:

  
Mark Binkley,  
Interim State Director

2. Subject: Request for approval to pay 3 employees amounts under \$10,000 each for a violation of the Fair Labor Standards Act (FLSA).

3. Summary: The Department is seeking approval to pay liquidated damages that are under \$10,000 to three employees totaling \$12,129.22. These liquidated damages were assessed by the USDOL as part of a settlement agreement. The SC Tort Policy does not cover these kinds of settlements.

**Background Information:** In its licensed hospitals and nursing homes, the Department is required to maintain certain staffing levels of nursing personnel to ensure adequate care of patients and residents. Due to the significant number of nursing vacancies, like most hospitals and nursing homes, DMH inpatient facilities have become heavily reliant on using supplemental staffing. In 2018 alone, our nursing overtime costs averaged over \$182,000 monthly. During the same time period, costs for nursing staff through private staffing agencies averaged \$460,000 monthly. In some cases, DMH employed nurses supplemented their income by working part time for private nurse staffing agencies. Some of these private agencies were the very ones with whom we were contracting.

Several employees filed a complaint with the US Department of Labor (USDOL) alleging that they, when working in a DMH facility through a private nurse staffing agency, were entitled to overtime pursuant to the Fair Labor Standards Act (FLSA). An investigation by USDOL determined that when assigned to a DMH facility by their private employer the nurses were frequently doing the same or similar jobs as their DMH jobs. USDOL concluded that the Department was in violation of the FLSA and that the employees should have been paid overtime.

DMH was mandated to pay the back wages at the time-and-one-half rate, less a credit for the amounts the employees received from their private employer. Additionally, USDOL assessed liquidated damages in an amount equal to the unpaid overtime for each employee. By agreeing to the settlement, the Department will be able to avoid additional penalties.

We originally came before the SFAA at its June 2017 meeting and received approval to pay back wages and liquidated damages to 77 employees in the amount of \$586,238.48. At that time, we were unaware there were any additional wages owed to employees in this class. Upon further review and inquiry, it was discovered that three additional employees were due back wages and liquidated damages totaling \$24,258.44

Subsequent to the action by USDOL, the Department has instituted measures to prevent the practice of DMH employed nurses who choose to work part time for a private temporary nurse staffing agency being assigned to work in a DMH facility.

4. What is the Authority asked to do? Approve our request to pay liquidated damages in the amount of \$12,129.22
- 

5. What is recommendation of Board Division involved?
- 

6. Recommendation of other office (as required)?

- (a) Authorized Signature: \_\_\_\_\_  
(b) Office Name: \_\_\_\_\_
- 

7. Supporting Documents:

- (a) List those attached:
1. USDOL letter notifying SCDMH of onsite visit (October 7, 2015)
  2. USDOL letter of findings/violations (February 22, 2017)
  3. USDOL Disbursement instructions
  4. Spreadsheet of employees with liquidated damages that are under \$10,000
  5. Agreement and release between SCDMH and affected employees

U.S. DEPARTMENT OF LABOR

Wage and Hour Division  
Columbia District Office  
Charleston Field Office  
4600 Goer Dr. Spt112  
Charleston, SC 29406  
Phone: (803) 343-6869  
Fax: (803) 343-6869



DATE: October 07, 2015

TO: Eleanor Odom  
Department of Mental Health (all locations)  
2414 Ball Street  
Columbia, SC 29202

RECORDS PRESENTED ON:

DATE: TBD

TIME: 10:00am

FROM: Kate Ellis

SUBJECT: Visit by Wage & Hour Investigator

The Wage & Hour Division of the U.S. Department of Labor is responsible for the administration and enforcement of a number of Federal Labor Laws. These include the Fair Labor Standards Act (FLSA), commonly known as the Federal Minimum Wage and Overtime Law.

This is to advise you that I will visit your establishment on the date and at the time shown above to determine compliance with one or more of these laws. In this regard, I will need the items checked below.

Authority for this investigation is contained in Section 11(a) of the FLSA. Section 11(a) states, "The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transmissions thereof, question such employees, and investigate such facts, conditions, practices or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter or which may aid in the enforcement of the provisions of this chapter."

X Payroll Records for all employees (including payroll journals) for the time period May 2015 to the present.

X Time Records for all employees for the time period May 2015 to the present.



- ☒ Listing of all employees considered to be exempt from minimum wage and/or overtime, with their job descriptions, salaries paid, and dates of employment.
- ☒ Records or documents that reflect the gross sales figures of your business for each of the last three years (fiscal or calendar). (Such as the first page of Form 1120, US Corporation Income Tax Return).
- ☐ List of 3 of your major vendors/suppliers, their addresses, and the type of merchandise supplied.
- ☒ Federal Identification Number.
- ☒ Names, addresses, and rate of pay of all employees for the past 24 months.
- ☒ Names, addresses, telephone numbers and titles of Owners/Corporate Officers / Shareholders, address and telephone number of headquarters.
- ☒ Locations of other stores/ branches statewide with managers' contact information.
- ☒ Copy of the most recent payroll (2 weeks) for the entire location.
- ☒ 1099 Forms and contract documents with any independent contractors, subcontractors or day laborers at this establishment.
- ☒ Legal name of the company and all other names used by the company (e.g. "Doing Business As" names).

The normal procedure is to hold an opening conference with a representative of the company, check certain records for a two-year period, interview a representative number of employees, and hold a closing conference to discuss the results of the investigation.

If you are unable to produce all of the requested documentation as of the date indicated, we shall proceed to conduct the audit with the information that you do have available pursuant to the authority contained in Section 11(a) and (c) of the FLSA and in Part 516 of the Code of Federal Regulations.

Per section 15(a)(3) of the FLSA, you are prohibited from retaliating against any person who files a complaint with the Wage and Hour Division or who cooperates with a Wage and Hour Division investigation. You are also prohibited from retaliating against your employees for accepting payment of the wages owed to them or from requiring your employee to return or decline payment of the wages owed to them.

Every effort will be made to conduct this assignment expeditiously and with a minimum of inconvenience to you and your employees. However, please note that the above is not intended to be an exhaustive or final list of records to be examined.

If you are unable to be present on the date and at the time indicated, you may designate a representative to act on your behalf. If you have any questions, please do not hesitate to contact me at (803) 476-6315.

Thank you for your attention to this matter.

Kelra Ellis  
Investigator, U.S. Department of Labor

Enclosures: Handy Reference Guide, Fact Sheet #44, Fact Sheet # 77A, Fact Sheet #28D

**U.S. Department of Labor**

Wage & Hour Division  
Charleston Area Office  
4600 Goer Drive, Suite 112  
Charleston, SC 29406  
Phone: 803-343-6867



February 22, 2017

Ms. Zina Hampton—Dir. Of Administrative Operations  
C/O South Carolina Department of Mental Health  
P.O. Box 485  
Columbia, SC 29202

**SUBJECT: Fair Labor Standards Act—overtime/recordkeeping violations**

Dear Ms. Hampton:

The recent investigation of your firm conducted by Investigator Keira Ellis under the Fair Labor Standards Act (FLSA) covered the period 10/05/2013 to 10/03/2015. The investigation disclosed that your employees are subject to the requirements of the FLSA.

The investigation disclosed violations of FLSA Section 207 resulting from the failure to properly pay statutory overtime pay for hours worked in excess of 40 hours per week. These violations resulted in underpayments totaling \$283,119.24 due to 77 employees, plus an equal amount of \$283,119.24 in liquidated damages due the 77 employees. In addition, violations of FLSA Section 211 were found as accurate time and payroll records were not kept for employees.

Investigator Ellis has advised me that you have agreed to comply fully with all the provisions of the FLSA in the future. Specifically, you agreed to keep accurate time and payroll records for all employees, and to pay overtime correctly. Additionally, you agreed to pay the above described back wages and liquidated damages in full by 05/31/2017. Consistent with the back wage payment instructions provided you by Investigator Ellis, proof of payment must be sent to our Columbia, SC District Office to the attention of our Back Wage Specialist, Dowana Woodson. If you should have any questions regarding back wage payment, Ms. Woodson can be contacted at (803) 343-8849.

Any defaulted agreement shall be subject to the assessment of interest and penalty interest at rates determined by the U.S. Treasury as required by the Debt Collection Improvement Act of 1996 (Public Law 104-134) published by the Secretary of the Treasury in the Federal Register and other delinquent charges and administrative costs shall also be assessed.

In the event of default, the Department intends to pursue additional collection action that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice.

We would also like to direct your attention to section 16(e) of the FLSA and Regulations, Part 578. As you will note, section 16(e) provides for the assessment of a civil money penalty for any repeated or willful violations of Section 206 or 207, in an amount not to exceed \$1,100 for each such violation. No penalty is being assessed as a result of this investigation. If at any time in the future your firm is found to have violated the monetary provisions of the FLSA, it will be subject to such penalties.

I have enclosed a copy of Regulation Part 578 for your reference. Other relevant Fact Sheets, Regulations, and a Handy Reference Guide were previously provided by Investigator Ellis for your reference. If you have any questions about the investigation or about any aspect of the FLSA, please do not hesitate to contact myself or Investigator Ellis.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jason L. Coker".

Jason L. Coker  
Assistant District Director

Enclosure(s): Regulation Part 578

U. S. Department of Labor

Wage and Hour Division  
Steven Thompson Federal Bldg.  
1826 Assembly Street, Room 1602  
Columbia, SC 29201



South Carolina Department of Mental Health case id: 1772584  
2614 Bull Street  
Columbia, SC 29202

**BACK WAGE DISBURSEMENT AND PAY EVIDENCE INSTRUCTIONS**

As provided in the Acts enforced by the Wage and Hour Division, the Administrator of the Wage and Hour Division is authorized to supervise the payment of back wages. This document contains specific instructions on providing evidence of payment to the Wage and Hour Division.

**IMPORTANT DATES TO REMEMBER**

- Date payment must be made to employees/former employees
- Date final pay evidence must be received by the Columbia, SC District Office:
- Date unlocated employee listing and final check due in Columbia, SC District Office:

05/31/2017

06/16/2017

06/16/2017

1. Per our agreement, your firm will make full back wage payment on or before:
2. Send the Wage-Hour Division final pay evidence to the Columbia, SC District Office as they are returned to you but no later than:

06/31/2017

**This should include:**

- Signed WH-58 Receipt Form
  - Copies of the **FRONT AND BACK** of AND BACK of the cancelled check(s) or a bank record of the employees who were paid through electronic funds transfer (EFT) for any person you have paid but for whom you do not have a signed receipt.
  - Listing showing any employee who have not been paid (due to missing address or otherwise). This list should include each employee's last known address, social security number, and what attempts you have made to locate the person. Examples of attempts made to the unlocated person will be a copy of the returned envelope, and or a copy of the certified mail tracking if the envelope is not returned.
3. Send the Wage-Hour Division a check (for all unlocated employees that you have no signed WH-58 receipt form or no cancelled check copy) on or before:

The check should be made out to "Wage and Hour Division - Labor" for the total NET amount along with the check should be a listing of the Gross and Net amounts due each employee whose back wages are included in this check, along with their social security numbers. If any employee is located within the statutory time period, the U.S. Department of Labor will process payments to such employee.

- NOTE: Section 18(c) of the Fair Labor Standards Act also provides, in part: "Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States." Therefore, it is the policy of the Wage-Hour Division to deposit back wages due unlocated employees into the U.S. Treasury
- Any defaulted balance shall be subject to the assessment of interest and penalty interest at rates determined by the U. S. Treasury as required by the Debt Collection Improvement Act of 1996 (Public Law 104-134) published by the Secretary of Treasury in the Federal Register and other delinquent charges and administrative cost shall be also assessed.
- In the event of default, the Department intends to pursue additional action that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, U. S. Treasury's Debt Management Service, and/or the Department of Justice.



All back wage pay evidence should be sent to:

U.S. Department of Labor  
Wage Hour Division  
Attention: Dawana Woodson  
1835 Assembly Street, Room 1072  
Columbia, SC 29201  
Phone/Fac: 803-343-6619

Agreed to by the following party:

South Carolina Department of Mental Health  
By its Officer

Eleanor C. Odom  
Signature

Name: Eleanor C. Odom

Title: HR Director

Date: 1-23-2017

UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION

Keira Ellis  
Signature

Name: Keira Ellis

Wage Hour Investigator: \_\_\_\_\_

Date: \_\_\_\_\_

| PerNbr   | Name             | Total Worked Hours<br>over 40 for DOL<br>Calculation | Total of<br>Projected Payroll<br>Cost | Liquidated<br>Damages | Total Cost to<br>Employee | Work<br>Week<br>Count | Position<br>Class<br>Code | Age (as of<br>02/20/19<br>) |
|----------|------------------|------------------------------------------------------|---------------------------------------|-----------------------|---------------------------|-----------------------|---------------------------|-----------------------------|
| 10017207 | White, Martin    | 462.84                                               | \$ 4,879.34                           | \$ 4,879.34           | \$ 9,758.68               | 42                    | EA70                      | 53                          |
| 10081077 | Cannon, Lakeshia | 205.00                                               | \$ 3,074.98                           | \$ 3,074.98           | \$ 6,149.95               | 39                    | EA70                      | 39                          |
| 10074231 | Palmer, Mandi    | 350.25                                               | \$ 4,174.90                           | \$ 4,174.90           | \$ 8,349.80               | 13                    | EA30                      | 29                          |

\$ 12,129.22 \$ 12,129.22 \$ 24,258.44

## **AGREEMENT AND RELEASE**

The South Carolina Department of Mental Health (SCDMH) and **EMPLOYEE** in concluding their participation in a United States Department of Labor investigation pertaining to overtime pay for the time period October 5<sup>th</sup>, 2013 through October 3<sup>rd</sup>, 2015, agree to the following:

1. This agreement pertains to the subject matter described above only and is not binding on the parties as to any other circumstance or event.
2. The parties freely enter into this agreement and the terms herein are not to be construed as an admission of liability or fault by either party.
3. No later than September 30, 2019, SCDMH will make available to **EMPLOYEE** a check in the total amount of \$ **AMOUNT**, representing the back wages and liquidated damages due as identified by the Department of Labor.
4. Except as may be necessary to enforce the terms of this agreement, neither party will pursue any legal or administrative claim or action against the other regarding the subject of this agreement, including claims of retaliation, breach of contract, tort, equitable relief or any other damage, cost, expense or loss, whether based on a tort, contract or other theory of recovery, and all claims that were asserted or could have been asserted in any litigation or other dispute pertaining to the subject of this agreement.
5. The parties will not disclose to any third party and will otherwise keep confidential, all terms and circumstances of this agreement as well as the subject of this agreement, except as may be required to perform a respective party's obligation under this agreement, as may be required by law, or as necessary in future legal and administrative proceedings to enforce this agreement.

6. After signing this agreement, each party will promptly notify the other in writing should a party learn of any significant actual or potential claim or dispute regarding the subject of this agreement or this agreement.

7. This agreement is subject to the approval of the State Fiscal Accountability Authority.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
SCDMH

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



August 2, 2019

Ms. Eleanor Odom, Director  
Human Resource Services  
S.C. Department of Mental Health

Via email only at [eleanor.odom@scdmh.org](mailto:eleanor.odom@scdmh.org)

Dear Ms. Odom:

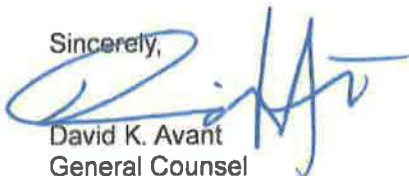
The Department of Administration (Admin) has been asked to review the Department of Mental Health's (DMH) "Request for Approval to Pay Three Employees Amounts under \$10,000 each For a Violation of the Fair Labor Standards Act (FLSA)" (Request). It is my understanding that the Request is scheduled to be considered at the August 13, 2019 meeting of the State Fiscal Accountability Authority (SFAA).

According to the proposed Agenda Item for SFAA's consideration in this matter, the three employees in question were similarly situated to those 77 employees who received compensation as part of the settlement of a USDOL investigation that was initiated on or about October 7, 2015 and covered the period of October 2013 through October 2015. Additionally, I spoke with Mark Binkley who confirmed that these three employees were indeed employees who, during the time period covered by the USDOL investigation, worked hours that should have been credited as overtime as the result of their simultaneous employment with a temporary staffing agency.

Based on this information, Admin believes that it would be appropriate for the Request to be handled in the same manner as was SFAA's approval of the original settlement of the USDOL investigation in June of 2017. Admin's position would be consistent with the position originally expressed in the attached letter of June 12, 2017 to SFAA's Executive Director, Grant Gillespie.

Please don't hesitate to contact Admin should you have additional questions or comments.

Sincerely,

  
David K. Avant  
General Counsel

cc: Delbert Singleton (via email only)



## **19-718.11. APPROVAL OF PERSONNEL SETTLEMENTS.**

It is the policy of the State Fiscal Accountability Authority that personnel settlement proposals be presented to the State Fiscal Accountability Authority for approval as outlined in the following:

A. In all situations where a personnel settlement has not been negotiated or approved by the Office of the Attorney General under a plan approved by the Office of the Attorney General;

B. In all human resources-related matters, after review and recommendation by the State Human Resources Director, excluding settlements which have been negotiated and approved by the Workers' Compensation Commission, Department of Employment and Workforce, Equal Employment Opportunity Commission, or South Carolina Human Affairs Commission; and

C. In all other situations where specific approval of the State Fiscal Accountability Authority would be necessary to disburse funds mentioned under the settlement proposal. Exception: Personnel Settlements containing lump sum amounts where payment would be supplied by the Insurance Reserve Fund or an agency's Foundation Fund.

1. All personnel settlement proposals shall contain such information as the State Fiscal Accountability Authority or its designee specifies.

2. The State Human Resources Director may review and approve any personnel settlement of \$10,000 or less.

STATE FISCAL ACCOUNTABILITY AUTHORITY  
MEETING OF August 13, 2019

REGULAR SESSION  
ITEM NUMBER 7

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AGENCY: College of Charleston

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SUBJECT: Not Exceeding \$50,000,000 Academic and Administrative Facilities Revenue Bonds, Series 2019A

The Authority is asked to adopt a resolution making provision for the issuance and sale of not exceeding \$50,000,000 Academic and Administrative Facilities Revenue Bonds, Series 2019A.

The proceeds of the bonds will be used for the renovation and expansion of the Simons Center for the Arts.

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AUTHORITY ACTION REQUESTED:

Adopt a resolution making provision for the issuance and sale of not exceeding \$50,000,000 Academic and Administrative Facilities Revenue Bonds, Series 2019A.

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ATTACHMENTS:

Foley 5/30/2019 letter; Resolution; NDIF

Rion D. Foley  
rfoley@burr.com  
T 843.723.7831  
F 843.722.3227

Burr & Forman, LLP  
100 Calhoun Street  
Suite 400  
Charleston, SC 29401

*Mailing Address*  
Post Office Box 1431  
Charleston, SC 29402

May 30, 2019

*Office* (843) 723-7831  
*Fax* (843) 722-3227

**Via FedEx**

BURR • COM

Mr. Delbert H. Singleton, Jr.  
Secretary  
State Fiscal Accountability Authority  
601 Wade Hampton Office Building  
Columbia, SC 29201

Re: Proposed Not Exceeding \$50,000,000 Academic and Administrative Facilities Revenue  
Bonds, Series 2019A, of the College of Charleston

Dear Delbert:

In connection with the August 13, 2019 meeting of the State Fiscal Accountability Authority, enclosed is a Transmittal Form, Revenue Bonds, for a proposed issue of bonds by the College of Charleston, together with a New Debt Information Form prepared by Piedmont Securities LLC (Financial Advisor to the College of Charleston) and other required documentation.

Please let us know if you have questions or need additional documentation.

Very truly yours,

BURR & FORMAN LLP



Rion D. Foley

RDF:mpc

Enclosures

cc: Kevin Kibler  
Robert MacDonald, III  
Samuel B. Jones  
William Youngblood, Esq.



## A RESOLUTION

### AUTHORIZING THE ISSUANCE BY THE COLLEGE OF CHARLESTON OF NOT EXCEEDING \$50,000,000 ACADEMIC AND ADMINISTRATIVE FACILITIES REVENUE BONDS, SERIES 2019A AND OTHER MATTERS RELATED THERETO

As an incident to the adoption of this Resolution and based upon certain representations made to it in the Petition referred to herein, the South Carolina State Fiscal Accountability Authority (the "SFAA") makes the following findings:

A. The College is an institution of higher education of the State of South Carolina authorized by Title 59, Chapter 130, Article 5, Code of Laws of South Carolina, 1976, as amended (the "Academic Act") to issue academic and administrative facilities revenue bonds for the purpose of financing or refinancing in whole or in part the cost of acquisition, construction, reconstruction, renovation and improvement of land, buildings, and other improvements to real property and equipment for the purpose of providing certain academic and administrative buildings as defined under the Academic Act and constituting Higher Education Facilities within the meaning of the General Bond Resolution hereinafter referred to.

B. The Board of Trustees of the College (the "Board of Trustees") is the governing body of the College, constituted pursuant to Section 59-130-10, Code of Laws of South Carolina, 1976, as amended.

C. The College has determined there is a need for the renovation and expansion of the Simons Center for the Arts (the "Series 2019A Project").

D. By an authorizing resolution adopted on April 12, 2019, the Board of Trustees authorized the President (or his designee) to begin making arrangements necessary for the offering of Not Exceeding \$50,000,000 Academic and Administrative Facilities Revenue Bonds, Series 2019A in consultation with the State Treasurer of South Carolina, including, without limitation, the preparation of a preliminary official statement, an official statement, the publication of an official notice of bond sale and official bid form and other documents necessary for the offering and sale of the Series 2019A Bonds.

E. Under the Academic Act, the issuance of the Series 2019A Bonds will be subject to the approval by the SFAA.

F. The Series 2019A Bonds will be the sixteenth Series of Bonds, respectively, issued under a "GENERAL BOND RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF ACADEMIC AND ADMINISTRATIVE FACILITIES REVENUE BONDS OF THE COLLEGE OF CHARLESTON; PRESCRIBING THE FORM OF BONDS; LIMITING THE PAYMENT OF THE BONDS SOLELY TO CERTAIN DESIGNATED REVENUES AND PLEDGING THE REVENUES TO SUCH PAYMENT; CREATING CERTAIN FUNDS AND PROVIDING FOR PAYMENTS INTO SUCH FUNDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING" (the "General Bond Resolution").

G. The Series 2019A Bonds would be sold in a private placement, negotiated sale or competitive sale at the discretion of and under the direction of the Office of the State Treasurer. If such Series 2019A Bonds are sold pursuant to a public sale, bids therefore would be received in the Offices of

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the State Treasurer of South Carolina and awarded to the bidder offering the lowest true interest cost to the College with such methodology to be determined and set forth in greater detail in the Official Notice of Bond Sale and Official Bid Form for this issue.

H. The President of the College (or his designee) has advised the Board of Trustees that, under Section 3.3.D. of the General Bond Resolution, the College may designate additional sources of revenue for the payment of Academic and Administrative Facilities Revenue Bonds to be issued thereunder. In order to meet the Additional Bonds test of Section 3.3 of the General Bond Resolution or the debt service coverage covenants of Section 7.1 of the General Bond Resolution, it may be necessary for the Board of Trustees to designate such an additional source of revenue.

I. The SFAA has received a Petition and supporting documentation from the President of the College (or his designee) requesting the approval by the SFAA of the issuance by the College of the Series 2019A Bonds.

NOW THEREFORE, BE IT RESOLVED by the SFAA in meeting duly assembled:

1. The issuance by the College of not exceeding \$50,000,000 Academic and Administrative Facilities Revenue Bonds, Series 2019A is hereby approved.

2. The State Treasurer of South Carolina is hereby authorized to make arrangements necessary for the offering of the Series 2019A Bonds, and to award the Series 2019A Bonds through a private placement, negotiated sale or public sale.



# OFFICE OF STATE TREASURER

## New Debt Information Form (NDIF) - Initial Form

SFAA Approval Date: 08/13/19

Final Version Date: 00/00/00

### 1. AGENCY/ISSUER & FINANCING INFORMATION

Agency #: H150 Issuer: College of Charleston Series: 2019A  
Borrower (if not Issuer):  
Bond Caption: Academic and Administrative Facilities Revenue Bonds  
Bond Resolution Amount: \$50,000,000.00 Est. Production/Par Amt: \$39,625,000.00

(\* Used to calculate initial COI percentages; STO bond issues must use Par Amt \*)

#### Submitted By:

ENTITY: Piedmont Securities, LLC  
BY: Greg Fawcett  
ITS: Principal  
Tel: 704.990.2380  
Email: gfawcett@piedmonsecurities.com

Final Production/Par Amt: \$0.00

#### Transaction Type/Method of Sale:

X Public Offering: Competitive: X Negotiated:  
Direct Placement: Competitive: Negotiated:  
Governmental Loan/Governmental Purchaser  
Other:

MSRB (EMMA) Continuing Disclosure Requirement (Y/N): Y

MSRB (EMMA) Continuing Disclosure Responsible Party: College of Charleston - Issuer

### 2. FINANCING (NEW PORTION)

Project #: Project Name: Simons Center for the Arts Renovation  
Project Address/Location: 66 George Street, Charleston, SC Amount: \$45,000,000.00  
Project Type: Renovation/Expansion; Higher Education County: Charleston  
Projected Avg Interest Rate: 3.25% Final Maturity: 07/01/49

### 3. FINANCING (REFUNDED PORTION)

| Series to be Refunded | Refunded Maturities | Principal Refunded | IR of Refunded Bds | Est Yield of Refunding Bds | Est NPV Svgs. (\$) | Est NPV Svgs. (% of Ref. Bds) |
|-----------------------|---------------------|--------------------|--------------------|----------------------------|--------------------|-------------------------------|
| N/A                   |                     | \$                 |                    |                            | \$                 |                               |
|                       |                     | \$                 |                    |                            | \$                 |                               |
|                       |                     | \$                 |                    |                            | \$                 |                               |
| Total                 |                     | \$                 | *****              | *****                      | \$                 |                               |

### 4. FINANCING WORKING GROUP

Financial Advisor: Piedmont Securities, LLC Disclosure Counsel: Howell Linkous & Nettles  
Bond Counsel: Burr Forman McNair Issuer's Counsel: College of Charleston General Counsel  
Underwriter: TBD Trustee: Office of State Treasurer  
Paying Agent: US Bank Corporate Trust Other:

### 5. FINANCING/PROJECT DESCRIPTION

(Briefly, explain the financing/project, the anticipated costs, &amp; the basis for these cost estimates. Use an attachment if needed)

The College of Charleston (the "College") has determined there is a need for the renovation and expansion of the Simons Center for the Arts. The anticipated not to exceed Project costs, inclusive of Cost of Issuance, is \$50,000,000. The basis of the Project cost estimates are: (1) preliminary plan and design specifications prepared by 3rd party consultants in consultation with College officials; (2) available funds on hand or pledged to the Project; and, (3) historical Cost of Issuance paid by the College on past revenue bond transactions, as well as similarly situated Issuers.

### 6. FINANCING/PROJECT APPROVAL DATES

| Financing Approvals       |          | Notes:            |
|---------------------------|----------|-------------------|
| Issuer/Borrower Approval: | 04/12/19 | Board of Trustees |
| JBRC Approval:            | 07/30/19 | for consideration |
| SFAA Approval:            | 08/13/19 | for consideration |

| Project Approvals - Phase II (State Entities Only) |          | Notes:            |
|----------------------------------------------------|----------|-------------------|
| Issuer/Borrower Approval:                          | 04/12/19 | Board of Trustees |
| JBRC Approval:                                     | 07/30/19 | for consideration |
| SFAA Approval:                                     | 08/13/19 | for consideration |

### 7. TAX AND ARBITRAGE MATTERS & SPEND DOWN SCHEDULE

a. Is any portion of the project, once completed, to be managed by a third-party pursuant to a management contract? (if yes, please attach copy)

Yes No

☐ ☒

b. Will any third-party payments (from support organizations, private entities or the federal government) related to the facility, however indirectly, be used to pay debt service on the bonds?

☐ ☒

c. If yes to any of the above, please provide a square footage and cost estimate of the portion affected.

Sq. Footage - 0  
Cost Estimate - \$0



Est. Expenditures - Through 6 Months  
 Est. Expenditures - Through 12 Months  
 Est. Expenditures - Through 18 Months  
 Est. Expenditures - Through 24 Months  
 Est. Expenditures - Through 36 Months  
 Est. Expenditures - Through 48 Months  
 - Estimated Expenditures: Thru FY:

| Bond Proceeds    | FYF       | Spend Down Schedule Notes                                    |
|------------------|-----------|--------------------------------------------------------------|
| \$ 7,520,795.05  | 6/30/2020 | COI, A/E, Permits, Site Prep, Materials                      |
| \$ 12,500,000.00 | 6/30/2021 | Phase I Renovation; Tear Out Existing Interior Features      |
| \$ 17,500,000.00 | 6/30/2021 | Phase II Renovation; Construct and Modernize Simons Center   |
| \$ 8,000,000.00  | 6/30/2022 | Phase III Renovation; Complete Project, Movement Into Simons |
| \$               | 00/00/00  |                                                              |
| \$               | 00/00/00  |                                                              |
| \$ 45,520,795.05 |           |                                                              |

## 8. ESTIMATED/ACTUAL PROJECT SOURCES AND USES

| Sources                                    | Est. Project Budget (Sources) | Est. Project Budget (Uses) | Uses                              |
|--------------------------------------------|-------------------------------|----------------------------|-----------------------------------|
| (1) Bond Proceeds: (a) Par                 | \$ 39,625,000.00              | \$ 50,000,000.00           | Project Fund                      |
| (b) Premium/Accr. Int.                     | \$ 5,895,795.05               | \$                         | Capitalized Interest Fund         |
| (2) Issuer/Borrower Contr.                 | \$                            | \$                         | Debt Service Reserve Fund         |
| (3) Debt Service Fund Trans.               | \$                            | \$                         | Redemption Price/Escrow Deposit   |
| (4) Debt Service Reserve Fund Contribution | \$                            | \$ 520,795.05              | Cost of Issuance (Incl. UW Disc.) |
| (5) Other (Specify)                        | \$                            | \$                         | Accrued Interest                  |
| Type -                                     | \$                            | \$                         | Other                             |
| <b>Residual Project Sources</b>            |                               | \$                         | Other                             |
| (6) Other                                  |                               | \$                         | Other                             |
| (a) Appropriated State                     | \$ 529,781.00                 | \$                         | Other                             |
| (b) Other, College Fees                    | \$ 315,000.00                 | \$                         | Other                             |
| (c) Other, CP Institutional                | \$ 4,155,219.00               | \$                         | Other                             |
| <b>Total Project Sources</b>               | <b>\$ 50,520,795.05</b>       | <b>\$ 50,520,795.05</b>    | <b>Total Project Uses</b>         |
| Surplus/Deficit                            |                               | \$                         |                                   |

## 9. ESTIMATED/ACTUAL BOND COI EXPENDITURES (\*\* Added COI entities beyond the following need an attached description \*\*)

| COI Entity                 | Selected COI Vendor      | Vend. # | Engagement Date (w/Engagement Ltr Attached) | Est. Fee For Services | Act. Fee For Services | (\$ Δ)               |
|----------------------------|--------------------------|---------|---------------------------------------------|-----------------------|-----------------------|----------------------|
| Financial Advisor          | Piedmont Securities, LLC |         |                                             | \$ 50,000.00          | \$                    | \$ 50,000.00         |
| Bond Counsel               | Burr Forman McNair       |         |                                             | \$ 39,625.00          | \$                    | \$ 39,625.00         |
| Disclosure Counsel         | Howell Linkous Nettles   |         |                                             | \$ 22,592.50          | \$                    | \$ 22,592.50         |
| Issuer's Counsel           | College of Charleston    |         |                                             | \$                    | \$                    | \$                   |
| Underwriter's Counsel      |                          |         |                                             | \$                    | \$                    | \$                   |
| Transaction Counsel        |                          |         |                                             | \$                    | \$                    | \$                   |
| Legal Expenses             |                          |         |                                             | \$ 5,000.00           | \$                    | \$ 5,000.00          |
|                            |                          |         |                                             | \$                    | \$                    | \$                   |
| Rating Agency - S&P        |                          |         |                                             | \$                    | \$                    | \$                   |
| Rating Agency - Moody's    |                          |         |                                             | \$ 50,000.00          | \$                    | \$ 50,000.00         |
| Rating Agency - Fitch      |                          |         |                                             | \$ 45,000.00          | \$                    | \$ 45,000.00         |
| Underwriter's Compensation |                          |         |                                             | \$ 297,187.50         | \$                    | \$ 297,187.50        |
| Registrar / Paying Agent   |                          |         |                                             | \$ 2,500.00           | \$                    | \$ 2,500.00          |
| Escrow Agent               |                          |         |                                             | \$                    | \$                    | \$                   |
| Accountant                 |                          |         |                                             | \$                    | \$                    | \$                   |
| Verification Agent         |                          |         |                                             | \$                    | \$                    | \$                   |
| Printing                   |                          |         |                                             | \$ 3,900.00           | \$                    | \$ 3,900.00          |
| Publishing                 |                          |         |                                             | \$                    | \$                    | \$                   |
| Advertising                |                          |         |                                             | \$                    | \$                    | \$                   |
| Contingency                |                          |         |                                             | \$ 4,990.05           | \$                    | \$ 4,990.05          |
| Issuer's Fee               | SC JEDA / SC SHFDA       |         |                                             | \$                    | \$                    | \$                   |
|                            |                          |         |                                             | <b>\$ 520,795.05</b>  | <b>\$</b>             | <b>\$ 520,795.05</b> |

### Est. / Actual COI Fees (% of Transaction):

Financial Advisor: % of Transaction  
 Bond Counsel: % of Transaction  
 Total Legal Costs: % of Transaction  
 Rating Agencies: % of Transaction

|       |         |
|-------|---------|
| 0.13% | #DIV/0! |
| 0.10% | #DIV/0! |
| 0.17% | #DIV/0! |
| 0.24% | #DIV/0! |

UW Comp: % of Transaction  
 Other COI: % of Transaction  
 Total COI: % of Transaction

|              |                |
|--------------|----------------|
| 0.75%        | #DIV/0!        |
| 0.03%        | #DIV/0!        |
| <b>1.31%</b> | <b>#DIV/0!</b> |



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AGENCY: Executive Director

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SUBJECT: Economic Development (2019 Ceiling Allocations)

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The initial balance of the 2019 state ceiling allocation is \$533,833,335. In accord with Code Section 1-11-520, \$213,533,334 (40% of the total) is designated as the state pool and \$320,300,001 (60% of the total) is designated as the local pool. There is presently a state ceiling balance of \$513,833,335 remaining for 2019. Allocation requests for 2019 totaling \$30,000,000 have been received thus far.

The recommendation from the Department of Commerce for allocations for this cycle totals \$60,000,000. The Department of Commerce makes the following recommendation for allocation from the local pool:

JEDA, The Heritage at Forest Acres Properties, LLC, \$60,000,000 (Financing includes (i) costs of acquiring, developing and constructing 40 rental independent living cottage 88 assisted living units and 42 memory care units for a senior housing community; (ii) working capital; (iii) a capitalized interest fund; (iv) a liquidity support fund; and (v) other costs of issuance);

If the Authority approves the recommended request, this will leave an unexpended state ceiling balance of \$453,833,335 (state pool - \$253,533,334; local pool - \$240,300,001) to be allocated later in the calendar year.

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AUTHORITY ACTION REQUESTED:

In accord with Code Section 1-11-500 et seq. and upon the recommendation of the Department of Commerce, grant the following tentative ceiling allocation from the local pool:

JEDA, The Heritage at Forest Acres Properties, LLC, \$60,000,000

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ATTACHMENTS:

2019 Ceiling Allocation Certification, 2019 Ceiling Allocation Requests; Young 8/5/19 Memo; Code Section 1-11-500 et seq.

**Summary, CY 2019**

**2019 South Carolina State Ceiling Allocations**

|                      |             |
|----------------------|-------------|
| 2019 State Ceiling   | 533,833,335 |
| Initial Allocations  | 90,000,000  |
| Expired/Relinquished | 10,000,000  |
| Actual Allocations   | 80,000,000  |
| Certified for Issue  | 10,000,000  |
| Carried Forward      | 0           |

**Balance Available:** 453,833,335

| Issuer                     | Name of Project                         | Allocation Amount | Expired/ Relinquished | Certified for Issue | Issue Date       | Attorney |
|----------------------------|-----------------------------------------|-------------------|-----------------------|---------------------|------------------|----------|
| <b>Allocation: 1/29/19</b> |                                         |                   |                       |                     |                  |          |
| JEDA                       | The Muffin Man, Inc.                    | 10,000,000        |                       |                     |                  | McKinney |
| JEDA                       | Probitas Ventures, LLC                  | 10,000,000        | 10,000,000            | 10,000,000          | 03/12/19 expired | McKinney |
| <b>Allocation: 5/14/19</b> |                                         |                   |                       |                     |                  |          |
| JEDA                       | Probitas Ventures, LLC                  | 10,000,000        |                       |                     |                  | McKinney |
| <b>Allocation: 8/13/19</b> |                                         |                   |                       |                     |                  |          |
| JEDA                       | The Heritage at Forest Acres Properties | 60,000,000        |                       |                     |                  | McKinney |

**2019 South Carolina State Ceiling**

**Balance as of August 13, 2019, if ceiling allocation granted**

|                               |                    |
|-------------------------------|--------------------|
| State Pool (40%)              | 213,533,334        |
| <b>Total State Pool (40%)</b> | <b>213,533,334</b> |

|                                     |                    |
|-------------------------------------|--------------------|
| Local Pool (60%)                    | 320,300,001        |
| <b>Total Local Pool (60%)</b>       | <b>320,300,001</b> |
| <b>Certified State Ceiling 2019</b> | <b>533,833,335</b> |

| <b>Date</b> | <b>Governmental Unit</b> | <b>Name of Project</b> | <b>Pool Total</b> | <b>Amount Allocated</b> | <b>Balance Available</b> | <b>Certified for Issue</b> | <b>Issue Date</b> | <b>Attorney</b> |
|-------------|--------------------------|------------------------|-------------------|-------------------------|--------------------------|----------------------------|-------------------|-----------------|
| 01/02/19    | STATE POOL               |                        | 213,533,334       |                         |                          |                            |                   |                 |

|                          |            |                                         |             |            |             |            |          |          |
|--------------------------|------------|-----------------------------------------|-------------|------------|-------------|------------|----------|----------|
| <b>TOTAL, STATE POOL</b> |            |                                         |             |            |             |            |          |          |
| 01/02/19                 | LOCAL POOL |                                         | 213,533,334 | 0          | 213,533,334 | 0          |          |          |
| 01/29/19                 | JEDA       | The Muffin Man, Inc.                    |             | 10,000,000 |             | 10,000,000 | 03/12/19 | McKinney |
| 01/29/19                 | JEDA       | Probitas Ventures, LLC                  |             | 0          |             | 0          | expired  | McKinney |
| 05/14/19                 | JEDA       | Probitas Ventures, LLC                  |             | 10,000,000 |             |            |          | McKinney |
| 08/13/19                 | JEDA       | The Heritage at Forest Acres Properties |             | 60,000,000 |             |            |          | McKinney |

|                          |                    |                   |                    |                   |
|--------------------------|--------------------|-------------------|--------------------|-------------------|
| <b>TOTAL, LOCAL POOL</b> | <b>320,300,001</b> | <b>80,000,000</b> | <b>240,300,001</b> | <b>10,000,000</b> |
| <b>GRAND TOTAL</b>       | <b>533,833,335</b> | <b>80,000,000</b> | <b>453,833,335</b> | <b>10,000,000</b> |

2019 Calling Allocation Requests

| Recd. | Issuing Authority | Project                                 | Request    | Cumulative | Bond Counsel      | Request |         | Location | NOTES |
|-------|-------------------|-----------------------------------------|------------|------------|-------------------|---------|---------|----------|-------|
|       |                   |                                         |            |            |                   | Alloc   | St. Law |          |       |
| 1     | 01/29/19 JEDA     | The Muffin Mom, Inc.                    | 10,000,000 | 10,000,000 | Kathleen McKinney | x       |         | Lauris   |       |
| 2     | 01/29/19 JEDA     | Probas Ventures, LLC                    | 10,000,000 | 20,000,000 | Kathleen McKinney | x       |         | Marboro  |       |
| 3     | 01/29/19 JEDA     | Probas Ventures, LLC                    | 10,000,000 | 30,000,000 | Kathleen McKinney | x       |         | Marboro  |       |
| 4     | 06/13/19 JEDA     | The Heritage at Forest Acres Properties | 60,000,000 | 90,000,000 | Kathleen McKinney | x       |         | Richland |       |





Henry McMaster  
Governor

**SOUTH CAROLINA**  
DEPARTMENT OF COMMERCE

Robert M. Hitt III  
Secretary

**MEMORANDUM**

To: Delbert Singleton

From: Daniel Young *ADY*

Date: August 5, 2019

Re: August 31, 2017 meeting

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Upon the request of SC State Fiscal Accountability Authority, the South Carolina Department of Commerce evaluates allocation requests that pertain to economic development.

After reviewing information provided by the law firm of Haynesworth Sinkler Boyd, P.A. regarding a senior living project the Department of Commerce recommends approval at the August 13, 2017, meeting of the State Fiscal Accountability Authority. This project will create 85 new jobs within 24 months.

| Name                         | Amount       | Score | County   |
|------------------------------|--------------|-------|----------|
| The Heritage at Forest Acres | \$60,000,000 | 5     | Richland |

Please let me know if you have any questions.

Thank you.

# TRANSMITTAL FORM, REVENUE BONDS

TO: Delbert H. Singleton, Jr., Authority Secretary  
State Fiscal Accountability Authority  
600 Wade Hampton Building  
Columbia, SC 29201  
ORP. O. Box 12444, Columbia, SC 29211

DATE: July 1, 2019

Submitted for SFAA Meeting on:

August 13, 2019

FROM:

Kathleen McKinney, Haynsworth Sinkler Boyd, P.A.  
Name of Law Firm

1 North Main Street, 2<sup>nd</sup> Floor  
Street Address/Box Number

Greenville, SC 29601  
City, State, Zip Code

864-240-3243  
Area Code/Telephone Number

RE:

\$60,000,000  
Amount of Issue

SC Jobs-Economic Development Authority  
Name of Issuing Authority

Senior Living Revenue Bonds  
Type of Bonds or Notes

September 2019  
Projected Issue Date

Project Name: The Heritage at Forest Acres Properties, LLC Project

Project Description: Financing includes (i) cost of acquiring, developing and constructing 40 rental independent living cottages, 88 assisted living units and 42 memory care units for a senior housing community; (ii) working capital; (iii) a capitalized interest fund; (iv) a liquidity support fund; and (v) other costs of issuance

Employment as a result of the project: Estimated minimum of 85 jobs within 24 months plus 500 construction jobs

Ceiling Allocation Required  
X Yes (\$ 60,000,000)    No  
Amount

Refunding Involved  
   Yes (\$           ) X No  
Amount

Project Approved Previously  
   Yes (            ) X No  
Amount

Documents enclosed (executed original and two copies of each):

(ALL documents required for state law approval; A and C only for ceiling allocation only.)

- A. X Petition
- B. N/A Resolution or Ordinance
- C. X Inducement Resolution or comparable preliminary approval
- D. N/A Department of Health and Environmental Control Certificate *if required*
- E. N/A State Fiscal Accountability Authority Resolution and Public Notice *(original)*

Plus            copies for certification and return to bond counsel

F. N/A Draft bond counsel opinion letter

G. N/A Processing Fee  
Amount: \$             
Payor:           

Check No:           

Bond Counsel: Kathleen McKinney  
Typed Name of Bond Counsel

By:  
SFAA

Kathleen C. McKinney

Signature

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

**PETITION OF SOUTH  
CAROLINA JOBS-ECONOMIC  
DEVELOPMENT AUTHORITY**

This Petition of the South Carolina Jobs-Economic Development Authority (the “*Authority*”), pursuant to South Carolina Code Annotated, Title 1, Chapter 11 (1976), as amended (the “*Act*”), respectfully shows:

2. Each State ceiling allocation made by the SF AA, unless eligible and approved for carry-forward election is valid only for the calendar year in which the State ceiling allocation is made and expires automatically if the bonds for which the allocation is made are not issued within 90 consecutive calendar days from the date the allocation is approved.

4. The Project is expected to be a qualified residential rental project as described under Section 142 of the Internal Revenue Code (the “Code”).

Upon the basis of the foregoing, the Authority respectfully prays that the State Fiscal Accountability Authority (i) accept the filing of this Petition and the documents submitted herewith, (ii) make such review as it deems advisable and (iii) allocate to the Bonds \$60,000,000 from the State ceiling for calendar year 2019.

Respectfully submitted,

**SOUTH CAROLINA JOBS-ECONOMIC  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Harry A. Huntley  
Executive Director

Dated: July 17, 2019



A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT BY AND BETWEEN THE SOUTH CAROLINA JOBS-ECONOMIC DEVELOPMENT AUTHORITY, THE HERITAGE AT FOREST ACRES PROPERTIES, LLC AND THE HERITAGE AT FOREST ACRES MANAGEMENT COMPANY, LLC, WHEREBY UNDER CERTAIN CONDITIONS THE SOUTH CAROLINA JOBS-ECONOMIC DEVELOPMENT AUTHORITY WILL ISSUE NOT EXCEEDING \$60,000,000 OF ITS REVENUE BONDS PURSUANT TO THE PROVISIONS OF TITLE 41, CHAPTER 43, OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED; AND AUTHORIZING THE APPLICATION UPON CERTAIN CONDITIONS TO THE SOUTH CAROLINA COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT FOR APPROVAL OF THE ISSUANCE OF SUCH BONDS AND THE STATE FISCAL ACCOUNTABILITY AUTHORITY FOR APPROVAL OF STATE CEILING ALLOCATION.

WHEREAS, the South Carolina Jobs-Economic Development Authority (the "*Authority*"), acting by and through its Board of Directors is authorized and empowered under and pursuant to the provisions of Title 41, Chapter 43, of the Code of Laws of South Carolina 1976, as amended (the "*Act*"), to utilize any of its program funds to establish loan programs for the purpose of reducing the cost of capital to business enterprises which meet the eligibility requirements of Section 41-43-150 of the Act and for other purposes described in Section 41-43-160 of the Act and thus provide maximum opportunities for the creation and retention of jobs and improvement of the standard of living of the citizens of the State of South Carolina (the "*State*") and in the promotion and advancement of industrial, commercial, agricultural, and recreational development in the State; and

WHEREAS, the Authority is further authorized by Section 41-43-110 of the Act to issue revenue bonds, as defined in the Act to include notes, payable by the Authority solely from a revenue producing source and secured by a pledge of said revenues; and

WHEREAS, The Heritage at Forest Acres Properties, LLC and The Heritage at Forest Acres Management Company, LLC, each a Florida limited liability company (collectively, the "*Borrower*"), has applied to the Authority to issue not exceeding \$60,000,000 of its revenue bonds (the "*Bonds*") in one or more series in order to defray a portion of the cost of (i) acquiring approximately 26.49 acres of land in Richland County, South Carolina (the "*County*"), located at 1348 Sunnyside Drive, Forest Acres, South Carolina; (ii) constructing, developing and equipping an assisted living and memory care rental community for seniors to be known as The Heritage at Forest Acres, expected to consist of approximately one hundred seventy (170) total units of senior housing, including forty (40) independent living cottages, eighty-eight (88) assisted living units and forty-two (42) memory support units (the "*Series 2019 Project*"); (iii) funding capitalized interest on the Bonds; (iv) funding a working capital Fund; (v) funding a liquidity support fund; and (vi) funding the cost of issuance of the Bonds (collectively, the "*Undertaking*"), and the Authority wishes to induce the Borrower to cause the Project to be acquired, renovated and constructed within the State; and

WHEREAS, it is in the public interest, for the public benefit and in furtherance of the public purposes of the Authority that its Board of Directors provide preliminary approval of the issuance of revenue bonds for the aforesaid purposes; and

**WHEREAS**, it is deemed advisable by the Authority to file with the South Carolina Coordinating Council for Economic Development (the "*Coordinating Council*"), in compliance with Section 41-43-110 of the Act, the Petition of the Authority requesting approval by the Coordinating Council for the issuance of the Bonds at public or private sale upon receipt by the Authority from the Borrower of evidence satisfactory to the Authority of the economic feasibility of the Project; and

**WHEREAS**, it is deemed advisable by the Authority to file with the State Fiscal Accountability Authority, in compliance with the provisions of Title 1, Chapter 11, of the Code of Laws of South Carolina 1976, as amended, the Petition of the Authority requesting not exceeding \$60,000,000 of the State ceiling to be allocated by the State Fiscal Accountability Authority to the Bonds;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Authority as follows:

**Section 1.** It is hereby found, determined, and declared as follows:

(a) The Borrower is a responsible party engaged in the development, acquisition and operation of senior living communities.

(b) The Borrower has demonstrated to the Authority that the assistance of the Authority by the issuance of the Bonds will result in the creation of employment for those engaged in construction of the facilities of which the Project is an essential and necessary part, by providing employment for approximately one hundred (100) people within twenty-four (24) months when the Project is placed in full operation, with a resulting alleviation of unemployment and a substantial increase in payrolls and other public benefits incident to the conduct of such businesses not otherwise provided locally, and the number of jobs resulting from the assistance authorized herein bears a reasonable relationship to the principal amount of the Bonds.

(c) The principal amount of the Bonds bears a reasonable relationship to the amount of private funds committed to the Project.

(d) The size and scope of the Project is such that a definite benefit to the economy of the State and the County, in particular, is reasonably expected to result therefrom.

**Section 2.** Subject to such approval by the State Fiscal Accountability Authority (as authorizer of State ceiling allocation) and the Coordinating Council, as required by law, the Board of Directors of the Authority preliminarily approves the issuance and sale of revenue bonds of the Authority pursuant to Section 41-43-110 of the Act in a principal amount of not exceeding \$60,000,000 for the purpose of providing financing to the Borrower for the acquisition, equipping and construction of the Project.

**Section 3.** The issuance and sale of the Bonds shall be upon such terms and conditions as may be mutually agreed upon by the Authority, the Borrower, and the purchaser of the Bonds, and shall be subject to completion of proceedings for issuance, sale, and delivery of the Bonds satisfactory to the Authority. The provisions, terms, and conditions of the agreements to be entered into in connection with the issuance of the Bonds by the Authority, and the form, details, rate or rates of interest, maturity, and redemption provisions, if any, of the Bonds, other details of any loan agreement relating to the Bonds, and findings required by the Act shall be prescribed by subsequent resolution of the Authority and shall be reasonable and proper, taking into account such factors as the type of program involved, the principal amount of the Bonds, and the

number and type of program involved, the principal amount of the Bonds, and the number and type of jobs involved; the public interest shall be adequately protected by the terms thereof.

**Section 4.** The Executive Director of the Authority is hereby authorized and directed to execute the Inducement Agreement attached hereto in the name and on behalf of the Authority, and is hereby further authorized and directed to deliver said executed Inducement Agreement to the Borrower.

**Section 5.** It is the intention of the Authority that this resolution shall constitute official intent on the part of the Authority within the meaning of the applicable regulations of the Treasury Department relating to the issuance of tax-exempt revenue bonds.

**Section 6.** To be eligible for reimbursement of any expenditures, the Borrower will allocate the proceeds of any bonds to reimburse such expenditures not later than 18 months after the later of (a) the date on which the original expenditures were paid or (b) the date the project was placed in service or abandoned, but in no event more than three years after the original expenditures were paid. Expenditures, for purposes of the declaration of official intent and the reimbursement allocation, do not apply to any "preliminary expenditures" for a project, up to an amount not in excess of 20 percent of the aggregate issue price of the Bonds. "*Preliminary expenditures*" include architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that were incurred prior to the commencement of acquisition, construction or rehabilitation of the Project. Costs such as land acquisition, site preparation, and similar costs incident to commencement of construction are not "preliminary expenditures" and official intent must be expressed as to these costs.

Any expenditures to be reimbursed from bond proceeds and initially paid from operating or capital reserve funds of the Borrower will be incurred solely to acquire, construct, or rehabilitate property having a reasonably expected economic life of at least one year.

**Section 7.** The Bonds shall never constitute an indebtedness of the Authority or the State within the meaning of any State constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the Authority or the State or a charge against the general credit of the Authority or the State or the taxing powers of the State.

**Section 8.** Upon receipt by the Authority from the Borrower of evidence, which shall be satisfactory to the Authority, of the economic feasibility of the Project, there shall be and is hereby authorized and directed the submission on behalf of the Authority, of (i) a Petition requesting approval by the Coordinating Council pursuant to the provisions of Section 41-43-110 of the Act of the issuance of the Bonds through public or private sale, and (ii) a Petition requesting approval by the State Fiscal Accountability Authority of allocation to the Bonds of \$60,000,000 from the state ceiling for calendar year 2019, which Petitions constitute and are hereby made a part of this authorizing resolution, to be in form acceptable to the Coordinating Council and State Fiscal Accountability Authority, respectively.

**Section 9.** The Executive Director of the Authority shall be and is hereby authorized and directed to execute said Petitions in the name and on behalf of the Authority and thereafter, upon the conditions set forth hereinabove, to submit an executed copy of this resolution to the Coordinating Council and the State Fiscal Accountability Authority.

**Section 10.** All orders and resolutions and parts thereof in conflict herewith are to the extent of such conflict hereby repealed, and this resolution shall take effect and be in full force from and after its passage and approval.

Passed and approved July 17, 2019.

**SOUTH CAROLINA JOBS-ECONOMIC  
DEVELOPMENT AUTHORITY**

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Harry A. Huntley  
Executive Director

## ARTICLE 3.

### ALLOCATION OF STATE CEILING ON ISSUANCE OF PRIVATE ACTIVITY BONDS

#### **SECTION 1-11-500.** Calculation and certification of state ceiling.

The state ceiling on the issuance of private activity bonds as defined in Section 146 of the Internal Revenue Code of 1986 (the Code) established in the act must be certified annually by the Budget and Control Board secretary based upon the provisions of the act. The board secretary shall make this certification as soon as practicable after the estimates of the population of the State of South Carolina to be used in the calculation are published by the United States Bureau of the Census but in no event later than February first of each calendar year.

#### **SECTION 1-11-510.** Allocation of bond limit amounts.

- (A) The private activity bond limit for all issuing authorities must be allocated by the board in response to authorized requests as described in Section 1-11-530 by the issuing authorities.
- (B) The aggregate private activity bond limit amount for all South Carolina issuing authorities is allocated initially to the State for further allocation within the limits prescribed herein.
- (C) Except as is provided in Section 1-11-540, all allocations must be made by the board on a first-come, first-served basis, to be determined by the date and time sequence in which complete authorized requests are received by the board secretary.

#### **SECTION 1-11-520.** Private activity bond limits and pools.

- (A) The private activity bond limit for all state government issuing authorities now or hereafter authorized to issue private activity bonds as defined in the act, to be known as the "state government pool", is forty percent of the state ceiling less any amount shifted to the local pool as described in subsection (B) of this section or plus any amount shifted from that pool.
- (B) The private activity bond limit for all issuing authorities other than state government agencies, to be known as the "local pool", is sixty percent of the state ceiling plus any amount shifted from the state government pool or less any amount shifted to that pool.
- (C) The board, with review and comment by the Joint Bond Review Committee, may shift unallocated amounts from one pool to the other at any time.

#### **SECTION 1-11-530.** Authorized requests for allocation of bond limit amounts.

- (A) For private activity bonds proposed for issue by other than state government issuing authorities, an authorized request is a request included in a petition to the board that a specific amount of the state ceiling be allocated to the bonds for which the petition is filed. The petition must be accompanied by a copy of the Inducement Contract, Inducement Resolution, or other comparable preliminary approval entered into or adopted by the issuing authority, if any, relating to the bonds. The board shall forward promptly to the committee a copy of each petition received.
- (B) For private activity bonds proposed for issue by any state government issuing authority, an authorized request is a request included in a petition to the board that a specific amount of the state ceiling be allocated to the bonds for which the petition is filed. The petition must be accompanied by a bond resolution or comparable action by the issuing authority authorizing the issuance of the bonds. The board shall forward promptly to the committee a copy of each petition received.
- (C) Each authorized request must demonstrate that the allocation amount requested constitutes all of the private activity bond financing contemplated at the time for the project and any other facilities located at or used as a part of an integrated operation with the project.



**SECTION 1-11-540. Limitations on allocations.**

(A) The board, with review and comment by the committee, may disapprove, reduce, or defer any authorized request. If it becomes necessary to exercise this authority, the board and the committee shall take into account the public interest in promoting economic growth and job creation.

(B) Authorized requests for state ceiling allocations of more than ten million dollars for a single project are deferred until after July first unless the board, after review and comment by the committee, determines in any particular instance that the positive impact upon the State of approving an allocation of an amount greater than ten million dollars is of such significance that approval of the allocation is warranted.

**SECTION 1-11-550. Certificates by issuing authority and by board.**

(A) An allocation of the state ceiling approved by the board is made formal initially by a certificate which allocates tentatively a specific amount of the state ceiling to the bonds for which the allocation is requested. This tentative allocation certificate must specify the state ceiling amount allocated, the issuing authority and the project involved, and the time period during which the tentative allocation is valid. This certificate must remind the issuing authority that the tentative allocation is made final after the issuing authority chairman or other duly authorized official or agent of the issuing authority, before the issue is made, certifies the issue amount and the projected date of issue, as is required by subsection (B) of this section. It also may include other information considered relevant by the board secretary.

(B) The chairman or other authorized official or agent of an issuing authority issuing any private activity bond for which a portion of the state ceiling has been allocated tentatively shall execute and deliver to the board secretary an issue amount certificate setting forth the exact amount of bonds to be issued and the projected bond issue date which date must not be more than ten business days after the date of the issue amount certificate and it must be before the state ceiling allocation involved expires. The issue amount certificate may be an executed copy of the appropriate completed Internal Revenue Service form to be submitted to the Internal Revenue Service on the issue or it may be in the form of a letter which certifies the exact amount of bonds to be issued and the projected date of the issue.

(C) In response to the issuing authority's issue amount certificate required by subsection (B) of this section, the board secretary is authorized to issue and, as may be necessary, to revise a certificate making final the ceiling allocation approved previously by the board on a tentative basis, if the secretary determines that:

(1) the issuing authority's issue amount certificate specifies an amount not in excess of the approved tentative ceiling allocation amount;

(2) the issue amount certificate was received prior to the issue date projected and that the certificate is dated not more than ten days prior to the issue date projected;

(3) the issue date projected is within the time period approved previously for the tentative ceiling allocation; and

(4) the bonds when issued and combined with the total amount of bonds requiring a ceiling allocation included in issue amount certificates submitted previously to the board by issuing authorities do not exceed the state ceiling for the calendar year. Except under extraordinary circumstances, the board secretary shall issue this certificate within two business days following the date the issue amount certificate is received.

(D) In accordance with Section 149(e)(2)(F) of the Code, the secretary of the Budget and Control Board is designated as the state official responsible for certifying, if applicable, that certain bonds meet the requirements of Section 146 of the Code relating to the volume cap on private activity bonds.

(E) Any tentative or final state ceiling allocation granted by the board before the effective date of this act remains valid as an allocation of a portion of the volume cap for South Carolina provided under Section 146 of the Code. The allocations expire in accordance with the regulations under which they were granted or extended and their validity may be extended or reinstated in accordance with the provisions of Sections 1-11-500 through 1-11-570.

**SECTION 1-11-560.** Time limits on allocations.

(A) Any state ceiling allocation approved by the board is valid only for the calendar year in which it is approved, unless eligible and approved for carry-forward election or unless specified differently in the board certificates required by Section 1-11-550.

(B) Unless eligible and approved for carry-forward election or unless specified differently in board certificates required by Section 1-11-550, each state ceiling allocation expires automatically if the bonds for which the allocation is made are not issued within ninety consecutive calendar days from the date the allocation is approved by the board.

(C) In response to a written request by the chairman or other duly authorized official or agent of an issuing authority, the board, acting during the period an approved allocation is valid, may extend the period in which an allocation is valid in a single calendar year by thirty-one consecutive calendar days to a total of not more than one hundred twenty-one consecutive calendar days.

(D) In response to a written request by the chairman or other authorized official or agent of an issuing authority, the board may reinstate for a period of not more than thirty-one consecutive calendar days in any one calendar year part or all of an allocation approved but not extended previously in accordance with subsection (C) of this section in that same calendar year which has expired. The reinstatement request must certify that the authorized request submitted previously is still true and correct or a new authorized request must be submitted.

(E) A tentative ceiling allocation is canceled automatically if the chairman or other authorized official or agent of the issuing authority involved fails to deliver the issue amount certificate required by Section 1-11-550 to the board secretary before the bonds for which the allocation is made are issued.

(F) The chairman or other authorized official or agent of an issuing authority shall advise the board secretary in writing as soon as is practicable after a decision is made not to issue bonds for which a portion of the state ceiling has been allocated. All notices of relinquishment of ceiling allocations must be entered promptly in the board's records by the board secretary.

(G) Ceiling allocations which are eligible and approved for carry-forward election are not subject to the validity limits of this section. The board shall join with the issuing authorities involved in carry-forward election statements to meet the requirements of the Internal Revenue Service.

**SECTION 1-11-570.** Budget and Control Board to adopt policies and procedures.

The Budget and Control Board, after review and comment by the committee, may adopt the policies and procedures it considers necessary for the equitable and effective administration of Sections 1-11-500 through 1-11-570.

**SECTION 1-11-580.** Budget and Control Board to make quarterly payments on certain insurance contracts.

The Budget and Control Board shall make quarterly payments on insurance contracts where the annual premium exceeds fifty thousand dollars. The board shall undertake necessary negotiations to implement this requirement. Where fees may be incurred for quarterly rather than annual payments, the Budget and Control Board shall determine whether the investment income opportunity is greater or less than proposed fees and shall make the decision which best benefits South Carolina.

STATE FISCAL ACCOUNTABILITY AUTHORITY  
MEETING OF August 13, 2019

REGULAR SESSION  
ITEM NUMBER 9

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AGENCY: SFAA, Division of Procurement Services

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SUBJECT: Proposed Procurement Regulations

On May 13, 2019, Governor McMaster signed into law Act No. 41, which made a number of changes to the procurement code. To implement these changes, the Act requires SFAA to both publish interim regulations and submit proposed final regulations to the General Assembly. On June 18, 2019, the Authority approved the drafting of proposed final regulations and submission of a Notice of Drafting to the State Register for publication. Proposed interim and permanent regulations have now been drafted. Both these regulations are designed to implement 2019 Act No. 41. The proposed permanent regulations also address other best practices for Division and agency procurement staff and clarify existing law. An executive summary and the proposed regulations are attached.

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AUTHORITY ACTION REQUESTED:

- (a) Approve the attached proposed interim procurement regulations for publication in the State Register as interim regulations, as required by 2019 Act No. 41. These regulations will become effective when published in the State Register on August 23, 2019;
- (b) Approve the attached proposed permanent regulations (i) for publication in the State Register as proposed regulations, as required by the Administrative Procedures Act, and (ii) for submission to the General Assembly for legislative review, as required by the Administrative Procedures Act; and
- (c) Approve the scheduling of a public hearing by the Board, to be held in accordance with Section 1-23-111, for October 15, 2019, at 10:00 AM in Room 252 of the Edgar A. Brown Building, State House Grounds, if such hearing is requested as required by Section 1-23-110(3).

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ATTACHMENTS:

Agenda item worksheet with attachments



# STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

Meeting Scheduled for: August 13, 2019

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1. Submitted by:

- (a) Agency: SFAA, Division of Procurement Services  
(b) Authorized Official Signature:

  
John St.C. White, PE  
Materials Management Officer

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2. Subject:

Proposed Procurement Regulations

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3. Summary Background Information:

On May 13, 2019, Governor McMaster signed into law Act No. 41, which made a number of changes to the procurement code. To implement these changes, the Act requires SFAA to both publish interim regulations and submit proposed final regulations to the General Assembly. On June 18, 2019, the Authority approved the drafting of proposed final regulations and submission of a Notice of Drafting to the State Register for publication. Proposed interim and permanent regulations have now been drafted. Both these regulations are designed to implement 2019 Act No. 41. The proposed permanent regulations also address other best practices for Division and agency procurement staff and clarify existing law. An executive summary and the proposed regulations are attached.

---

4. What is Authority asked to do?

- (a) Approve the attached proposed interim procurement regulations for publication in the State Register as interim regulations, as required by 2019 Act No. 41. These regulations will become effective when published in the State Register on August 23, 2019.  
(b) Approve the attached proposed permanent regulations (i) for publication in the State Register as proposed regulations, as required by the Administrative Procedures Act, and (ii) for submission to the General Assembly for legislative review, as required by the Administrative Procedures Act.  
(c) Approve the scheduling of a public hearing by the Board, to be held in accordance with Section 1-23-111, for October 15, 2019, at 10:00 AM in Room 252 of the Edgar A. Brown Building, State House Grounds, if such hearing is requested as required by Section 1-23-110(3).

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5. What is recommendation of Agency/Division involved?

Approve.

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6. Recommendation of other Division/Agency (as required)?

- (a) Authorized Signature: \_\_\_\_\_  
(b) Division/Agency Name: \_\_\_\_\_

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7. List of Supporting Documents:



- (a) Executive Summary of Proposed Regulations
- (b) Proposed Regulations
- (c) 2019 Act No. 41, § 76

**Executive Summary**  
**Proposed Permanent & Interim Procurement Regulations**  
**August 13, 2019 SFAA Meeting**

Overview: On May 13, 2019, Governor McMaster signed into law Act No. 41, which made a number of changes to the procurement code. To implement these changes, the Act requires SFAA both to publish interim regulations and to submit proposed final regulations to the General Assembly.

The proposed interim regulations include all—and only—those proposed regulations that implement the changes in Act No. 41. All the substance of the interim regulations appears in the proposed permanent regulations.

The proposed permanent regulations include all the substance of the proposed interim regulations, and address a variety of other matters. The proposed permanent regulations also include a section-by-section discussion of each regulation.

This summary highlights only select areas that might be of interest. For details of each proposed revision, please see the section-by-section explanation preceding the full text of the proposed permanent regulations.

Selected Topics: The proposed permanent regulations would:

1. Provide guidelines for publishing notice of procurement actions. Act No 41 establishes additional publication requirements, including notice of emergency and sole source acquisitions. R. 19-445.2000F.
2. Establish criteria for withholding sensitive State documents until a prospective bidder agrees to keep them confidential. R. 19-445.2010I.
3. Define the process for the Director of the Division of Procurement Services to increase agency purchasing authority from \$50,000 up to \$150,000. Requests for certification over \$150,000 must still be approved by the Board. R. 19-445.2020.
4. Provide for the confidential disposition of bids and proposals when a solicitation is canceled, to avoid creating competitive disadvantage. Newly amended Code § 11-35-410(C) requires this rule. R. 19-445.2045C.
5. Establish procedures for a new source selection method, competitive negotiations. R. 19-445.2099.
6. Implement changes made by Act No. 41 to streamline the process for small purchases, including purchases of commercially available off-the-shelf products. R. 19-445.2100A through D; R. 19-445.2141.
7. Set out common-sense guidelines for identifying, evaluating, and resolving organizational conflicts of interest that create unfair competitive advantages. R. 19-445.2127.
8. Explain the effect of new Code § 11-35-2050, making certain contract terms unenforceable against the State. R. 19-445.2143.

Note: The attached document is considerably longer than necessary to provide only the changes proposed. Staff is requesting approval of the document to be submitted to the General Assembly, and the rules for doing so require printing the entire text of a regulation even if only one sentence is modified.



Document No. \_\_\_\_\_  
**STATE FISCAL ACCOUNTABILITY AUTHORITY**  
**CHAPTER 19**

Statutory Authority: 1976 Code Sections 11-35-10 et seq., and 2019 Act No. 41, Section 76

19-445. Consolidated Procurement Code.

**Synopsis:**

The Consolidated Procurement Code authorizes the State Fiscal Accountability Authority to promulgate regulations governing the procurement of any and all supplies, services, information technology, and construction to be procured by the State and any other regulations relating to implementation of Title 11, Chapter 35 (Sections 11-35-60 & -540(1)). In addition, Section 76 of 2019 Act No. 41 provides:

No later than the first Monday in September after this act takes effect, the State Fiscal Accountability Authority shall publish interim regulations it will follow to implement changes to Chapter 35, Title 11 of the 1976 Code, as contained in this act. These interim regulations must be used in implementing this act until such time as the final rules and regulations are adopted in accordance with this section and Chapter 23, Title 1. No later than the first Monday in November after this act takes effect, the State Fiscal Accountability Authority shall publish a draft of the proposed final regulations it will follow to implement changes; provided, however, the interim regulations are not subject to the provisions of Chapter 23, Title 1.

In accordance with this provision, the agency prepared two documents for publication in the State Register, one for the interim regulations and one for the proposed final regulations. This document publishes only those regulations issued on an interim basis, which includes all and only those regulations that implement changes made to the Consolidated Procurement Code by 2019 Act No. 41. The proposed final regulations are being published simultaneously. They include, but are not limited to, the interim regulations.

For a section-by-section discussion of the interim regulations, please see the section-by-section discussion published with the proposed final regulations.

**Instructions:** Repeal R. 19-445.2000E (Effective Date). In an Editor's Note to R. 19-445.2127, include the following text: "Regulation 19-445.2127 applies only to solicitations issued after November 29, 2019."

\*\*\*\*

The following sections of Regulation 19-445 are modified as provided below. All other items and sections remain unchanged.

**Text:**

19-445. Consolidated Procurement Code.

(Statutory Authority: 1976 Code Section 11-35-10 et seq., and 2019 Act No. 41, Section 76)

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| 19-445.2022. | Temporary Suspension of Authority; Audit.                                               |
| 19-445.2025. | Authority to Contract for Certain Services; Definitions.                                |
| 19-445.2030. | Competitive Sealed Bidding—The Invitation for Bids.                                     |
| 19-445.2040. | The Official State Government Publication.                                              |
| 19-445.2042. | Pre-Bid Conferences.                                                                    |
| 19-445.2045. | Receipt, Safeguarding, and Disposition of Bids.                                         |
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| 19-445.2055. | Bid Acceptance and Bid Evaluation.                                                      |
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| 19-445.2150. | Surplus Property Management.                                                            |
| 19-445.2152. | Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.           |
| 19-445.2155. | Intergovernmental Relations.                                                            |
| 19-445.2160. | Assistance to Minority Businesses.                                                      |
| 19-445.2165. | Gifts                                                                                   |
| 19-445.2180. | Assignment, Novation, and Change of Name.                                               |
| 19-445.2200. | Administrative Review Protective Orders.                                                |
| 19-445.3000. | School District Procurement Codes; Model.                                               |

19-445.2000. State Procurement Regulations.



#### A. General.

These Regulations issued by the South Carolina Budget and Control Board, hereafter referred to as the Board, establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of supplies, services, information technology, and construction, as applicable, under the authority of the South Carolina Consolidated Procurement Code, as amended. These Regulations are designed to achieve maximum practicable uniformity in purchasing throughout state government. Hence, implementation of the Procurement Code by and within governmental bodies, as defined in Section 11-35-310(18) of the Procurement Code, shall be consistent with these Regulations. Nothing contained in these Rules and Regulations shall be construed to waive any rights, remedies or defenses the State might have under any laws of the State of South Carolina.

#### B. Organizational Authority.

(1) The Chief Procurement Officers acting on behalf of the Board shall have the responsibility to audit and monitor the implementation of these Regulations and requirements of the South Carolina Consolidated Procurement Code. In accordance with Section 11-35-510 of the Code, all rights, powers, duties and authority relating to the procurement of supplies, services, and information technology and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services now vested in or exercised by any governmental body under the provisions of law relating thereto, and regardless of source funding, are hereby vested in the appropriate chief procurement officers. The chief procurement officers shall be responsible for developing such organizational structure as necessary to implement the provisions of the Procurement Code and these Regulations.

(2) Materials Management Office: The Materials Management Officer is specifically responsible for:

(a) developing a system of training and certification for procurement officers of governmental bodies in accordance with Section 11-35-1030;

(b) recommending differential dollar limits for direct procurements on the basis of but not limited to the following:

- (1) procurement expertise,
- (2) commodity,
- (3) service,
- (4) dollar;

(c) performing procurement audits of governmental bodies in accordance with Sections 11-35-70 and 11-35-1230 of the Procurement Code.

(d) overseeing acquisitions for the State by the State Procurement Office.

(e) coordinating with the Information Technology Management Office in accordance with Section 11-35-820;

(f) overseeing the acquisition of procurements by the State Engineer in accordance with Section 11-35-830.

(3) Office of Information Technology Management: The Office of Information Technology Management shall be responsible for all procurements involving information technology pursuant to Section 11-35-820 of the Procurement Code.

(4) Office of State Engineer: The Office of State Engineer under the direction and oversight of the Materials Management Officer shall be responsible for all procurements involving construction, architectural and engineering, construction management, and land surveying services pursuant to Section 11-35-830 of the Procurement Code.

#### C. Definitions

(1) "Head of purchasing agency" means the agency head, that is, the individual charged with ultimate responsibility for the administration and operations of the governmental body. Whenever the South Carolina Consolidated Procurement Code or these Regulations authorize either the chief procurement officer or the head of the purchasing agency to act, the head of the purchasing agency is authorized to act only within the limits of the governmental body's authority under Section 11-35-1210, except with regard to acts taken pursuant to Section 11-35-1560 and 11-35-1570.

(2) "Procuring Agency" means "purchasing agency" as defined in Section 11-35-310.

(3) "Certification" means the authority delegated by the board or the Director of Procurement Services to a governmental body to make direct procurements not under term contracts. Certification is granted pursuant to Section 11-35-1210 and R.19-445.2020.

D. Duty to Report Violations

All governmental bodies shall comply in good faith with all applicable requirements of the consolidated procurement code and these procurement regulations. When any information or allegations concerning improper or illegal conduct regarding a procurement governed by the consolidated procurement code comes to the attention of any employee of the State, immediate notice of the relevant facts shall be transmitted to the appropriate chief procurement officer.

E. [Reserved]

F. Notice.

(1) When adequate public notice is required by Article 5, the notice must contain sufficient information to allow a prospective offeror to make an informed business judgment as to whether she should compete (or would have competed) for the contract. At minimum the notice must contain the following information, as applicable:

- (a) a description of the item(s) to be acquired;
- (b) how to obtain a copy of the solicitation document or the anticipated contract;
- (c) when and where responses are due; and
- (d) the place of performance or delivery.

(2) In addition to the information above, the notices required by Section 11-35-1560 and Section 11-35-1570 must include the contract dollar amount of the proposed contract.

19-445.2010. Disclosure of Procurement Information.

A. Reserved.

B. Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall forward or refer all requests for information regarding the procurement to the responsible procurement officer. The procurement officer will respond to the request.

C. Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall not engage in conduct that knowingly furnishes source selection information to anyone other than the responsible procurement officer, unless otherwise authorized in writing by the responsible procurement officer. "Source selection information" means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (1) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (2) source selection plans, (3) technical evaluation plans, (4) technical evaluations of proposals, (5) cost or price evaluations of proposals, (6) information regarding which proposals are determined to be reasonably susceptible of being selected for award, (7) rankings of responses, proposals, or competitors, (8) reports, evaluations of source selection committees or evaluations panels, (9) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

D. In procurements conducted pursuant to Section 11-35-1530 or Section 11-35-1535, state personnel with access to proposal information shall not disclose either the number of offerors or their identity prior to the issuance of an award or notification of intent to award, whichever is earlier, except as otherwise required by law.

E. Prior to the issuance of an award or notification of intent to award, whichever is earlier, the procurement officer shall not release to any individual information obtained in response to an RFP, without first obtaining from that individual a written agreement, in a form approved by the responsible chief procurement officer, regarding restrictions on the use and disclosure of such information. Such agreements are binding and enforceable.

F. The release of a proposal to non-state personnel for evaluation does not constitute public disclosure or a release of information for purposes of the Freedom of Information Act.

G. Except as prohibited by law, and subject to section 2200, state contracts may include clauses restricting the state's release of documents and information received from a contractor if those documents are exempt from disclosure under applicable law.

H. Subject to item (E), any person may furnish source selection information to the Office of the State Engineer. The procurement officer shall provide to the Office of the State Engineer any information it requests regarding a procurement.

I. Non-Public Solicitations. In accordance with Section 11-35-410(E), information that forms a part of a specific solicitation need not be publicly available if (a) the information is otherwise exempt from disclosure by law (e.g., Chapter 4, Title 30 (The Freedom of Information Act)), (b) the information is available to any prospective offeror that has executed a nondisclosure agreement, and (c) the appropriate chief procurement officer has approved the use and terms of a non-disclosure agreement (NDA) for the solicitation at issue. Prior to use in a specific solicitation, the terms of a proposed NDA must be published in the solicitation unless otherwise approved by the CPO. When requesting approval from the appropriate chief procurement officer, the governmental body must identify the information to be released pursuant to the NDA, explain the reason for the request, cite the legal basis for not making the information publicly available, and provide any other information requested by the CPO. If governmental body declines a person's request to enter an NDA and acquire the information thereto, it must immediately notify the CPO. Consistent with R. 19-445.2030, the applicable solicitation should instruct bidders how to comply with the NDA when submitting their offer. Information to be released pursuant to the NDA may also be released in accordance with R. 19-445.2200 (Administrative Review Protective Orders).

19-445.2020. Certification.

A. Review Procedures.

(1) Unless otherwise authorized by statute, any governmental body that desires to make direct agency procurements in excess of \$50,000.00, shall contact the Materials Management Officer in writing to request certification in any area of procurement, including the following four areas:

- (a) Supplies and services;
- (b) Consultant services;
- (c) Construction and related professional services;
- (d) Information technology.

(2) The Materials Management Officer shall review and report on the particular governmental body's entire internal procurement operation to include, but not be limited to the following:

(a) Adherence to provisions of the South Carolina Consolidated Procurement Code and these Regulations;

- (b) Procurement staff and training;
- (c) Adequate audit trails and purchase order register;
- (d) Evidences of competition;
- (e) Small purchase provisions and purchase order confirmation;
- (f) Emergency and sole source procurements;
- (g) Source selections;
- (h) File documentation of procurements;
- (i) Decisions and determinations made pursuant to section 2015;
- (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers;

(k) Adequacy of written determinations required by the South Carolina Consolidated Procurement Code and these Regulations;

- (l) Contract administration;
- (m) Adequacy of the governmental body's system of internal controls in order to ensure compliance with applicable requirements.

(3) The report required by item A(2) shall be submitted to the Board.

B. Approval

(1)(a) Upon recommendation by the Materials Management Officer, the Director of the Division of Procurement Services may authorize the particular governmental body to make direct agency procurements in the areas described in item A(1)(a) and A(1)(d), not under term contracts, in an amount up to one hundred fifty thousand dollars, provided a report required by item A(2) has been prepared within two years preceding the request.

(b) Upon recommendation by the State Engineer based on her knowledge of and experience with the particular governmental body, the Director of the Division of Procurement Services may authorize the particular governmental body to make direct agency procurements in the areas described in item A(1)(c), not under term contracts, in an amount up to one hundred fifty thousand dollars.

(c) The director shall advise the board in writing of all authorizations granted pursuant to this section B.

(2) If a governmental body requests certification above one hundred fifty thousand dollars, the request, along with the recommendation of the Materials Management Officer and the report required by item A(2), shall be submitted to the board. Upon recommendation by the Materials Management Officer and approval by the board, the particular governmental body may be certified and assigned a dollar limit below which the certified governmental body may make direct agency procurements not under term contracts.

(3) Certification under item B(1) or B(2) shall be in writing and specify:

(a) The name of the governmental body;

(b) Any conditions, limits or restrictions on the exercise of the certification;

(c) The duration of the certification; and

(d) The procurement areas in which the governmental body is certified.

C. Using the criteria listed in item A(2) above, the office of each chief procurement officer shall be reviewed at least every five years by the audit team of the Materials Management Office. The results of the audit shall be provided to the appropriate chief procurement officer and the designated board officer.

D. Limitations.

(1) Such certification as prescribed in subsection B shall be subject to any term contracts established by the chief procurement officers which requires mandatory procurement by all governmental bodies.

(2) Such certification as prescribed in subsection B may be subject to maintaining an adequate staff of qualified or certified procurement officers.

#### 19-445.2045. Receipt, Safeguarding, and Disposition of Bids.

A. Procedures Prior to Bid Opening.

All bids (including modifications) received prior to the time of opening shall be kept secure and, except as provided in subsection B below, unopened. Necessary precautions shall be taken to insure the security of the bid. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to the state employees, and then only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

B. Unidentified Bids.

Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the Chief Procurement Officer, the procurement officer of the governmental body, or a designee of either officer. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the aforesaid official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids' number, and his signature, and then shall immediately reseal the envelope.

C. When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or if unopened, otherwise disposed of. Unopened bids or proposals are not considered to be public information under Chapter 4 of Title 30 (Freedom of Information Act).

19-445.2065. Rejection of Bids.

A. Unless there is a compelling reason to reject one or more bids, award will be made to the lowest responsible and responsive bidder. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices. As a general rule after opening, an invitation for bids should not be canceled and readvertised due solely to increased quantities of the items being procured; award should be made on the initial invitation for bids and the additional quantity required should be treated as a new procurement.

B. Cancellation of Bids Prior to Award.

(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be cancelled. Invitations for bids may be cancelled after opening, but prior to award, when such action is consistent with subsection A above and the procurement officer determines in writing that:

- (a) inadequate or ambiguous specifications were cited in the invitation;
- (b) specifications have been revised;
- (c) the supplies, services, information technology, or construction being procured are no longer required;
- (d) the invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (e) bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (f) all otherwise acceptable bids received are at unreasonable prices;
- (g) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
- (h) for other reasons, cancellation is clearly in the best interest of the State.

(2) Determinations to cancel invitations for bids shall state the reasons therefor.

C. Extension of Bid Acceptance Period.

Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement.

19-445.2080. Bid Reductions.

The responsible procurement officer may accept a voluntary reduction in price from a low bidder after bid opening but prior to award; provided that such reduction is not conditioned on, nor results in, the modification or deletion of any conditions contained in the invitation for bids.

19-445.2090. Award.

A. Application.

The contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids.

B. The procurement officer shall issue the notice of intent to award or award on the date specified in the solicitation, unless the procurement officer determines, and gives notice, that a longer review time is necessary. The procurement officer shall give notice of the revised posting date in accordance with Section 11-35-1520(10).

19-445.2095. Competitive Sealed Proposals.

A. Request for Proposals.

The provisions of Regulation 19-445.2040 shall apply to implement the requirements of Section 11-35-1530(2), Public Notice.

B. Receipt and Safeguarding of Proposals.



The provisions of Regulation 19-445.2045 shall apply for the receipt and safeguarding of proposals.

C. Receipt of Proposals.

The provisions of Regulation 19-445.2050(B) shall apply to the receipt and safeguarding of proposals. For the purposes of implementing Section 11-35-1530(3), Receipt of Proposals, the following requirements shall be followed:

(1) Proposals shall be opened publicly by the procurement officer or his designee in the presence of one or more witnesses at the time and place designated in the request for proposals. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The Register of Proposals shall be certified in writing as true and accurate by both the person opening the proposals and the witness. The Register of Proposals shall be open to public inspection only after the issuance of an award or notification of intent to award, whichever is earlier. Proposals and modifications shall be shown only to State personnel having a legitimate interest in them and then only on a "need to know" basis. Contents and the identity of competing offers shall not be disclosed during the process of opening by state personnel.

(2) As provided by the solicitation, offerors must visibly mark all information in their proposals that they consider to be exempt from public disclosure.

D. [Repealed]

E. Clarifications and Minor Informalities in Proposals.

The provisions of Section 11-35-1520(13) shall apply to competitive sealed proposals.

F. Specified Types of Construction.

Consistent with Section 48-52-670, which allows the use of competitive sealed proposals, it is generally not practicable or advantageous to the State to procure guaranteed energy, water, or wastewater savings contracts by competitive sealed bidding.

G. Procedures for Competitive Sealed Proposals.

The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies using the competitive sealed proposal method of acquisition. Unless excused by the State Engineer, the Office of State Engineer shall oversee (1) the evaluation process for any procurement of construction if factors other than price are considered in the evaluation of a proposal, and (2) any discussions with offerors conducted pursuant to Section 11-35-1530(6) or subsection I below.

H. Other Applicable Provisions.

The provisions of the following Regulations shall apply to competitive sealed proposals:

(1) Regulation 19-445.2042, Pre-Bid Conferences,

(2) Regulation 19-445.2060, Telegraphic and Electronic Bids,

(3) Regulation 19-445.2075, All or None Qualifications,

(4) Regulation 19-445.2085, Correction or Withdrawal of Bids; Cancellation of Awards, and Cancellation of Awards Prior to Performance.

(5) Regulation 19-445.2137, Food Service Contracts.

I. Discussions with Offerors

(1) Classifying Proposals.

For the purpose of conducting discussions under Section 11-35-1530(6) and item (2) below, proposals shall be initially classified in writing as:

(a) acceptable (i.e., reasonably susceptible of being selected for award);

(b) potentially acceptable (i.e., reasonably susceptible of being made acceptable through discussions); or

(c) unacceptable.

(2) Conduct of Discussions.

If discussions are conducted, the procurement officer shall exchange information with all offerors who submit proposals classified as acceptable or potentially acceptable. The content and extent of each exchange

is a matter of the procurement officer's judgment, based on the particular facts of each acquisition. In conducting discussions, the procurement officer shall:

- (a) Control all exchanges;
- (b) Advise in writing every offeror of all deficiencies in its proposal, if any, that will result in rejection as non-responsive;
- (c) Attempt in writing to resolve uncertainties concerning the cost or price, technical proposal, and other terms and conditions of the proposal, if any;
- (d) Resolve in writing suspected mistakes, if any, by calling them to the offeror's attention.
- (e) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal, but only to the extent such revisions are necessary to resolve any matter raised by the procurement officer during discussions under items (2)(b) through (2)(d) above.

(3) Limitations. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Ordinarily, discussions are conducted prior to final ranking. Discussions may not be conducted unless the solicitation alerts offerors to the possibility of such an exchange, including the possibility of limited proposal revisions for those proposals reasonably susceptible of being selected for award.

(4) Communications authorized by Section 11-35-1530(6) and items (1) through (3) above may be conducted only by procurement officers authorized by the appropriate chief procurement officer.

#### J. Rejection of Individual Proposals.

(1) Proposals need not be unconditionally accepted without alteration or correction, and to the extent otherwise allowed by law, the State's stated requirements may be clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

- (a) the business that submitted the proposal is nonresponsible as determined under Section 11-35-1810;
- (b) the proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect; or
- (c) the proposed price is clearly unreasonable.

(2) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

#### K. [Reserved]

#### L. Delay in Posting Notice of Intent to Award or Award.

Regulation 19-445.2090B shall apply to competitive sealed proposals.

#### 19-445.2097. Rejection of Proposals.

A. Unless there is a compelling reason to reject one or more proposals, award will be made to the highest ranked responsible offeror or otherwise as allowed by Section 11-35-1530. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective offerors of any resulting modification or cancellation.

#### B. Cancellation of Solicitation Prior to Award.

(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the request for proposals shall be cancelled. A request for proposals may be cancelled after opening, but prior the issuance of an award or notification of intent to award, whichever is earlier, when such action is consistent with subsection A above and the procurement officer determines in writing that:

- (a) inadequate or ambiguous specifications were cited in the solicitation;
- (b) specifications have been revised;
- (c) the supplies, services, information technology, or construction being procured are no longer required;

(d) the solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;

(e) proposals received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the proposals were requested;

(f) all otherwise acceptable proposals received are at unreasonable prices;

(g) the proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

(h) for other reasons, cancellation is clearly in the best interest of the State.

(2) Determinations to cancel a request for proposals shall state the reasons therefor.

#### C. Extension of Bid Acceptance Period.

Should administrative difficulties be encountered after opening which may delay award beyond offeror's acceptance periods, the relevant offerors should be requested, before expiration of their offers, to extend the acceptance period (with consent of sureties, if any).

### 19-445.2099. Competitive Negotiations.

#### A. General

(1) Competitive negotiations are governed by R. 19-445.2030(5), -2040, -2042, -2045, -2050B, -2085C, -2090B, -2095C, -2095J, and -2098. Regulation 19-445-2097 (Rejection of Proposals) applies to competitive negotiations except that R. 19-445.2099(K)(1) is substituted for R. 19-445.2097A.

(2) Documentation required by this Regulation 19-445.2099 must be prepared at the time the process to be documented is conducted.

(3) For each competitive negotiation the head of the using agency or his designee must appoint in writing an individual to serve as the selection executive (SE). The SE must be an individual who has sufficient rank and professional experience to effectively carry out the functions of an SE. Subject to the authority and approval of the responsible procurement officer, the SE shall—

(a) Recommend an acquisition team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a well-developed solicitation, a comprehensive evaluation of offers, and effective negotiations;

(b) Approve the acquisition plan and the solicitation before solicitation release;

(c) Ensure consistency among and sufficiency of the solicitation requirements, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(d) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation;

(e) Consider the recommendations of subject matter experts, advisory boards or panels (if any); and

(f) Select the source or sources whose proposal is the best value to the State, as provided in R. 19-445.2099K.

(4) Consistent with Section 11-35-1535(A)(3), competitive negotiated acquisitions may be conducted only by the office of the appropriate chief procurement officer; accordingly, a chief procurement officer may not delegate to a using agency the authority to conduct a competitive negotiation.

#### B. Procedures for Competitive Negotiations.

The Division of Procurement Services may develop and issue procedures which shall be followed when using the competitive negotiations method of acquisition.

#### C. Definitions

Clarification means any communication in which the responsible procurement officer requests or accepts information that clarifies any information in a proposal. Clarification does not include the request or acceptance of any change to the terms of an offer.

Competitive range means the offeror or group of offerors selected for negotiation.

Deficiency means any term of an offer that does not conform to a material requirement of a solicitation. A material requirement is one that affects the price, quantity, quality, delivery, or other performance obligations of the contract.

Negotiation means any communication, oral or written, that invites or permits an offeror to change any texts or graphics in the terms of its offer in any way. Negotiation does not include communications involving (i) information that is necessary to understand an offer, but that does not change any text or graphics in the offer, (ii) information about the offeror, or (iii) any other information that will not bind the parties upon acceptance of an offer.

Offer means those portions of a proposal that constitute a written promise or set of promises to act or refrain from acting in a specified way, so made as to manifest a commitment to be bound by those promises upon acceptance by the State. Offer does not include mere descriptions of approaches, plans, intentions, opinions, predictions, or estimates; statements that describe the offeror's organization or capability; or any other statements that do not make a definite and firm commitment to act or refrain from acting in a specified way.

Proposal means the information submitted to the State in response to a request for proposals. The information in a proposal includes (i) the offer, (ii) information explaining the offer, (iii) information about the offeror, and (iv) any other information that is relevant to source selection decision making.

Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance. A "significant weakness" in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

#### D. Amending the solicitation

(1) When, either before or after receipt of proposals, the State changes its requirements or terms and conditions, the responsible procurement officer shall amend the solicitation.

(2) When, after the receipt of proposals, the State discovers that material inadequacies of the solicitation have contributed to technical or pricing deficiencies, the responsible procurement officer shall amend the solicitation to resolve the inadequacies, preferably prior to proceeding further with the procurement process.

(3) If a proposal of interest to the State involves a desirable departure from the stated requirements, the responsible procurement officer shall amend the solicitation, preferably prior to completion of proposal evaluation pursuant to F(1), provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see Regulation 19-445.2099I)).

(4) Amendments issued after the established time and date for receipt of proposals may not exceed the general scope of the request for proposals and must be issued to those offerors that have not been eliminated from the competition.

(5) If, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the responsible procurement officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

#### E. Evaluation Factors

(1) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

(2) Evaluation factors and significant subfactors must—

(a) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(b) Support meaningful comparison and discrimination between and among competing proposals.

(3) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance are within the broad discretion of the responsible procurement officer, subject to the following requirements:

(a) Price or cost to the State shall be evaluated unless the responsible procurement officer documents the reasons price or cost is not an appropriate evaluation factor for the acquisition and that decision is approved by the head of the using agency.

(b) The quality of the item to be acquired shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with

solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience.

(c) Past performance shall be evaluated unless the responsible procurement officer documents the reasons past performance is not an appropriate evaluation factor for the acquisition.

(4) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation. The rating method need not be disclosed in the solicitation.

(5) The request for proposals must state the relative importance of all factors to be considered in evaluating proposals but need not state a numerical weighting for each factor.

(6) If price is an evaluation factor, the solicitation must state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

#### F. Evaluation Process

(1) General. Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. All proposals shall be evaluated and, after evaluation, their relative qualities must be assessed solely on the factors and subfactors specified in the solicitation. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

(2) Evaluation methods. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings.

(3) Cost or price evaluation. The responsible procurement officer shall document the cost or price evaluation. Price reasonableness shall be determined independently of cost or price evaluation.

(4) Past performance evaluation.

(a) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered. This comparative assessment of past performance information is separate from the responsibility determination.

(b) The solicitation shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the stated requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. When evaluating an offeror's past performance, this information, as well as information obtained from any other sources, must be considered; however, the relevance of similar past performance information is a matter of business judgment.

(c) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

(5) Technical evaluation. The source selection records shall include—

(a) An assessment of each offeror's ability to accomplish the technical requirements; and

(b) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

#### G. Exchanges with offerors.

(1) Control. The responsible procurement officer shall control all exchanges after opening and prior to award.

(2) Fairness and Impartiality. The responsible procurement officer shall treat all offerors fairly and impartially when deciding whether and when to seek clarification or to negotiate. Similarly-situated offerors shall be given similar opportunities to clarify and, if in the competitive range, to negotiate.

(3) Clarifications. The responsible procurement officer may conduct clarifications at any time prior to the award decision.

(4) Competitive Range.

(a) After complying with Section 11-35-1535(G) (Evaluation), and before negotiating with anyone, the responsible procurement officer shall establish a competitive range comprised of the offerors that submitted the most promising offers.



(b) Ordinarily, the competitive range should not include more than three offerors. The responsible procurement officer may select only one offeror and may select more than three. The rationale for establishment of, and every modification to, the competitive range shall be determined in writing.

(c) Prior to conducting the minimum negotiations required by Section 11-35-1535(I)(3)(b)(i) and R. 19-445.2099H(2), otherwise promising offerors should not be excluded from the competitive range due solely to deficiencies that are reasonably susceptible of correction.

(d) After conducting the minimum negotiations required by 11-35-1535(I)(3)(b)(i) and R. 19-445.2099H(2), the responsible procurement officer may eliminate an offeror from the competitive range if the offeror is no longer considered to be among the most promising.

(e) Offerors excluded or otherwise eliminated from the competitive range may request a debriefing.

#### H. Negotiations with offerors

##### (1) Negotiations – General.

(a) The responsible procurement officer shall participate in and control all negotiations.

(b) The primary objective of negotiation is to maximize the State's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.

(c) The State may use any method of communication.

(d) Prior to any negotiation session, the using agency must document its prenegotiation objectives with regard to each offeror in the competitive range.

(e) The responsible procurement officer shall prepare a record of each negotiation session.

(f) Negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

(g) The responsible procurement officer may not relax or change any material requirement of the solicitation during negotiation except by amendment in accordance with R. 19-445.2099D.

(h) Negotiations may include pricing. The responsible procurement officer may state a price that the State is willing to pay for what has been offered and may tell an offeror its price standing.

(i) Subject to the following requirements, the scope and extent of negotiations are a matter of the responsible procurement officer's judgment:

(i) Section 11-35-30 (Obligation of Good Faith);

(ii) R. 19-445.2099G(2) (Fairness and Impartiality); and

(iii) R. 19-445.2099H(2) (Minimum Negotiations).

(j) The State may engage in more than one session with an offeror if necessary. Subject to R. 19-445.2099G(2), the conduct of multiple sessions with a particular offeror does not require the conduct of multiple sessions with other offerors.

(k) Throughout the competitive negotiation process, state personnel shall not disclose the content of any offeror's proposal to any other offeror.

(l) State personnel shall not promise that the State will select an offeror for award if it makes a particular change or set of changes to its offer.

##### (2) Negotiations – Minimum – Problem Identification

The State shall negotiate with each offeror in the competitive range. At a minimum, the State shall identify and seek the correction of any deficiency and the elimination of any other undesirable term in an offer.

##### (3) Negotiations – Enhancement.

(a) The responsible procurement officer may negotiate with offerors in the competitive range to seek changes in their offers that the State desires and to allow them to make other improvements.

(b) The responsible procurement officer may state specific terms that the State desires and seek improvements in already acceptable terms.

##### (4) Proposal Revisions.

(a) The responsible procurement officer may request or allow proposal revisions either (i) to clarify and document understandings reached during negotiations, or (ii) to provide offerors an opportunity to respond to an amendment.

(b) If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

(c) Upon the completion of all negotiations, the responsible procurement officer shall request that offerors still in the competitive range submit final offers not later than a specified common cutoff date and time that allows a reasonable opportunity for submission. When submitting final offers, an offeror may revise any aspect of its offer. The responsible procurement officer shall notify offerors that failure to submit a final offer by the common cutoff date and time will result in the consideration of their last prior offer. Requests for final offers shall advise offerors that final offers shall be in writing and that the government intends to make award without obtaining further revisions.

I. Limitations on exchanges. State personnel involved in the acquisition shall not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals the names of individuals providing reference information about an offeror's past performance; or

(4) Knowingly furnishes source selection information in violation of Regulation 19-445.2010.

J. Tradeoff Process

(1) A tradeoff process is appropriate when it may be in the interest of the State to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

(2) This process permits tradeoffs among cost or price and non-cost factors and allows the State to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file.

K. Award

(1) Unless there is a compelling reason to reject proposals, award must be made to the responsible offeror whose final proposal meets, in all material respects, the requirements announced in the solicitation, as amended, and is determined in writing to provide the best value to the State, taking into consideration the evaluation factors set forth in the request for proposals and, if price is an evaluation factor, any tradeoffs among price and non-price factors. Award must be based on a comparative assessment of final proposals from offerors within the competitive range against all source selection criteria in the solicitation.

(2) The contract file must document the basis on which the award is made, and the documentation must explain and justify the rationale for any business judgments and tradeoffs made or relied on in the award determination, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

(3) The contract file must document who performed the functions required by sections F, J, and K of R. 19-445.2099 and which functions they performed.

19-445.2100. Small Purchases and Other Simplified Purchasing Procedures.

A. Authority.

(1) An agency may make small purchases not exceeding the limits prescribed in Section 11-35-1550 in accordance with the procedures in that section and herein.

(2) Any purchase of supplies, services, or information technology made pursuant to Section 11-35-1550 must be within the agency's certification.

(3) These simplified acquisition procedures shall not be used for items available under mandatory state term contracts (see R. 19-445-2020B(1)).

(4) Contracts solely for the procurement of commercially available off-the-shelf products pursuant to section 11-35-1550 are not subject to laws identified in Section 11-35-2040.

(5) When required, adequate public notice must comply with R. 19-445.2000F.

(6) Section 11-35-4210(1)(d) makes the protest process inapplicable to contracts with an actual or potential value of up to \$50,000. Because the protest process applies to all small purchases in excess of

\$50,000, notice of an award must be communicated to all bidders on the same date award is made and must be documented in the procurement file. Any method of communication may be used.

B. Purchases pursuant to Section 11-35-1550(2)(b) (Three Written Quotes).

(1) If an agency does not receive responsive quotes from at least three responsible bidders, adequate public notice must be given and documented with the purchase requisition. So-called "no bids" are not bona fide and do not count as one of the three.

(2) Requests for quotes must be distributed equitably among qualified suppliers, unless adequate public notice is given in South Carolina Business Opportunities.

C. Purchases pursuant to Section 11-35-1550(2)(c) (Advertised Small Purchase) may be made by giving adequate public notice in South Carolina Business Opportunities and:

(1) issuing a written solicitation for written quotes, as described in Section 11-35-1550(2)(c);

(2) soliciting bids in accordance with Section 11-35-1520, Competitive Sealed Bidding, Section 11-35-1525, Competitive Fixed Price Bidding, or Section 11-35-1528, Competitive Best Value Bidding; or

(3) soliciting proposals in accordance with Section 11-35-1530, Competitive Sealed Proposals.

D. When conducting a small purchase over twenty-five thousand dollars for which adequate public notice is required, potential offerors must be provided reasonable time to prepare their bids, no less than seven (7) days after such notice is provided, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the head of the purchasing agency, the appropriate chief procurement officer, or the designee of either.

E. Establishment of Blanket Purchase Agreements.

(1) General. A blanket purchase agreement is a simplified method of filling repetitive needs for small quantities of miscellaneous supplies, services, or information technology by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

(2) Alternate Sources. To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive sources shall be given an equal opportunity to furnish supplies, services, or information technology under such agreements.

(3) Terms and Conditions. Blanket purchase agreements shall contain the following provisions:

(a) Description of agreement. A statement that the supplier shall furnish supplies, services, or information technology, described therein in general terms, if and when requested by the Procurement Officer, or his authorized representative, during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the supplier is in a position to furnish.

(b) Extent of obligation. A statement that the State is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement.

(c) Notice of individuals authorized to place calls and dollar limitations. A provision that a list of names of individuals authorized to place calls under the agreement, identified by organizational component, and the dollar limitation per call for each individual shall be furnished to the supplier by the Procurement Officer.

(d) Delivery tickets. A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

(1) name of supplier;

(2) blanket purchase agreement number;

(3) date of call;

(4) call number;

(5) itemized list of supplies, services, or information technology furnished;

(6) quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and

(7) date of delivery or shipment.

(e) Invoices one of the following statements:

(1) A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets; or

(2) An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets;

(3) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated provided that a consolidated payment will be made for each specified period; and the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later. This procedure should not be used if the accumulation of the individual invoices materially increases the administrative costs of this purchase method.

#### F. Competition Under Blanket Purchase Agreement.

Calls against blanket purchase agreements shall be placed after prices are obtained. When concurrent agreements for similar items are in effect, calls shall be equitably distributed. In those instances where there is an insufficient number of BPAs for any given class of supplies, services, or information technology to assure adequate competition, the individual placing the order shall solicit quotations from other sources.

#### G. Calls Against Blanket Purchase Agreement.

Calls against blanket purchase agreements generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed. Documentation of calls shall be limited to essential information. Forms may be developed for this purpose locally and be compatible with the Comptroller General's Office STARS system.

#### H. Receipt and Acceptance of Supplies or Services.

Acceptance of supplies, services, or information technology shall be indicated by signature and date on the appropriate form by the authorized State representative after verification and notation of any exceptions.

#### I. Review Procedures.

The governmental body shall review blanket purchase agreement files at least semiannually to assure that authorized procedures are being followed. Blanket purchase agreements shall be issued for a period of no longer than 12 months.

### 19-445.2105. Sole Source Procurements.

#### A. Application.

The provisions of this Regulation shall apply to all sole source procurements unless emergency conditions exist as defined in Regulation 19-445.2110.

#### B. Exceptions.

Sole source procurement is not permissible unless there is only a single supplier. The following are examples of circumstances which could necessitate sole source procurement:

(1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;

(2) where a sole supplier's item is needed for trial use or testing;

(3) [Repealed]

(4) [Repealed]

(5) where the item is one of a kind; and

(6) [Repealed]

#### C. Written Determination.

The determination as to whether a procurement shall be made as a sole source shall be made by either the Chief Procurement Officer, the head of a purchasing agency, or designee of either office above the level of the procurement officer. Any delegation of authority by either the Chief Procurement Officer or the head of a purchasing agency with respect to sole source determinations shall be submitted in writing to the Materials Management Officer. Such determination and the basis therefor shall be in writing. Such officer

may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request by a governmental body that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision. The determination must be authorized prior to contract execution.

D. Notice.

(1) Compliance with the notice requirements in Section 11-35-1560(A) must be documented in the procurement file.

(2) The public notice required by Section 11-35-1560(A) must include the written determination required by Section C(2) above or instructions how to obtain the written determination immediately upon request.

19-445.2110. Emergency Procurements.

A. Application.

The provisions of this Regulation apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

B. Definition.

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by either the Chief Procurement Officer or the head of a purchasing agency or a designee of either office. The existence of such conditions must create an immediate and serious need for supplies, services, information technology, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (1) the functioning of State government;
- (2) the preservation or protection of property; or
- (3) the health or safety of any person.

C. Limitations.

Emergency procurement shall be limited to those supplies, services, information technology, or construction items necessary to meet the emergency.

D. Conditions.

Any governmental body may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by either the head of a purchasing agency or his designee or the Chief Procurement Officer shall be obtained prior to the procurement.

E. Selection of Method of Procurement.

The procedure used shall be selected to assure that the required supplies, services, information technology, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

F. Notice.

Compliance with the notice requirements in Section 11-35-1570(B) must be documented in the procurement file.

G. Written Determination.

The Chief Procurement Officer or the head of the purchasing agency or a designee of either office shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision.

19-445.2115. Information Technology Procurements.

A. Reserved.

B. Reserved.

C. Software Licensing



Pursuant to Section 11-35-510, the Information Technology Management Officer may execute an agreement with a business on behalf of, and which binds all, governmental bodies in order to establish the terms and conditions upon which computer software may be licensed, directly or indirectly, from that business by a governmental body. Such an agreement may provide for the voluntary participation of any other South Carolina public procurement unit. Such agreements do not excuse any governmental body from complying with any applicable requirements of the Procurement Code and these Regulations, including the requirements of Section 11-35-1510.

#### 19-445.2120. Cost or Pricing Data.

##### A. Definitions

(1) Adequate Price Competition. Price competition exists if competitive sealed proposals are solicited, at least two responsive and responsible offerors independently compete for a contract, and price is a substantial factor in the evaluation. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines in writing that such competition is not adequate.

(2) Commercial product has the meaning stated in Section 11-35-1410(1).

(3) Established catalog price has the meaning stated in Section 11-35-1410.

(4) Established Market Price means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources which are independent of the manufacturer or supplier and may be an indication of the reasonableness of price.

(5) Prices Set by Law or Regulation. The price of a supply or service is set by law or regulation if some governmental body establishes the price that the offeror or contractor may charge the State and other customers.

##### B. Thresholds

(1) Section 11-35-1830(1)(a) applies where the total contract price exceeds five hundred thousand dollars.

(2) Section 11-35-1830(1)(b) applies where the pricing of any change order, contract modification, or termination settlement exceeds five hundred thousand dollars, unless the procurement officer determines in writing that such information is necessary to determine that the pricing is reasonable. Price adjustment amounts shall consider both increases and decreases (e.g., a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000.). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(3) Ordinarily, cost and pricing data should not be required for the acquisition of any item that meets the definition of commercial product, including any modification that does not change the item from a commercial product to a non-commercial product. The contractor may be required to submit cost or pricing data for commercial products or COTS only if the purchase or modification exceeds the thresholds established in this section and the procurement officer determines in writing that no other basis exists to establish price reasonableness.

##### C. Conditions of Waiver

The requirements of Section 11-35-1830 may be waived if the head of the using agency determines in writing that the price can be determined to be fair and reasonable without submission of cost or pricing data.

##### D. Refusal to Submit Data

A refusal by the offeror to supply the requested information may be grounds to disqualify the offeror or to defer award pending further review and analysis.

#### 19-445.2125. Responsibility of Bidders and Offerors.

##### A. State Standards of Responsibility.

Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has:

(1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;

(2) a satisfactory record of performance;

(3) a satisfactory record of integrity;

(4) qualified legally to contract with the State; and

(5) supplied all necessary information in connection with the inquiry concerning responsibility.

**B. Obtaining Information; Duty of Contractor to Supply Information.**

At any time prior to award, the prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor non responsible if such failure is unreasonable. In determining responsibility, the procurement officer may obtain and rely on any sources of information, including but not limited to the prospective contractor; knowledge of personnel within the using or purchasing agency; commercial sources of supplier information; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; government agencies; and business and trade associations.

**C. Demonstration of Responsibility.**

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(1) evidence that such contractor possesses such necessary items;

(2) acceptable plans to subcontract for such necessary items; or

(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

**D. Duty Concerning Responsibility.**

(1) Before awarding a contract or issuing a notification of intent to award, whichever is earlier, the procurement officer must be satisfied that the prospective contractor is responsible. The determination is not limited to circumstances existing at the time of opening.

(2) Consistent with Section 11-35-1529(3), the procurement officer must determine responsibility of bidders in competitive on-line bidding before bidding begins.

**E. Written Determination of Nonresponsibility.**

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.

**F. Special Standards of Responsibility**

When it is necessary for a particular acquisition or class of acquisitions, the procurement officer may develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors. A valid special standard of responsibility must be specific, objective and mandatory.

**G. Subcontractor responsibility.**

(1) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. Determinations of prospective subcontractor responsibility may affect the procurement officer's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

(2) When it is in the state's interest to do so, the procurement officer may directly determine a prospective subcontractor's responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a

prime contractor's responsibility shall be used by the procurement officer to determine subcontractor responsibility.

#### 19-445.2127. Organizational Conflicts of Interest.

##### A.General.

(1) "Organizational conflict of interest" occurs when, because of other activities or relationships with the State or with other businesses:

- (a) a business is unable or potentially unable to render impartial assistance or advice to the State, or
- (b) the business' objectivity in performing the contract work is or might be otherwise impaired, or
- (c) a business has an unfair competitive advantage.

(2) This regulation applies to acquisitions of supplies, services and information technology, except for acquisitions made pursuant to Section 11-35-1550. Unless the procurement uses a project delivery method identified in Section 11-35-3005(1)(e), 1(f), or (2)(a), this regulation does not apply to acquisitions under Article 9 (Construction, Architect-Engineer, Construction Management, and Land Surveying Services).

(3) The general rules in sections B (Providing systems engineering and technical direction), C (Preparing specifications or work statements), and D (Providing evaluation of offers) below prescribe limitations on contracting as the means of avoiding organizational conflicts of interest that might otherwise exist in the stated situations. Conflicts may arise in situations not expressly covered in sections B, C, and D. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are

(a) Preventing the existence of conflicting roles that might bias a contractor's judgment; and

(b) Preventing unfair competitive advantage. Without limitation, an unfair competitive advantage exists where a business competing for award of a State contract possesses (i) proprietary information that was obtained from the State without authorization; or (ii) source selection information (R. 19-445.2010C) that is relevant to the contract but is not available to all competitors, and such information would assist that business in obtaining the contract.

(4) The terms "contractor" and "subcontractor" are defined by Section 11-35-310.

B.Providing systems engineering and technical direction. (1) A business shall not be awarded a contract to supply a system or any of its major components, or be a subcontractor or consultant, if that business, as a contractor, provided or provides a combination of substantially all of the following activities:

- (a) determining specifications or developing work statements,
- (b) determining parameters,
- (c) identifying and resolving interface problems,
- (d) developing test requirements,
- (e) evaluating test data,
- (f) supervising design,
- (g) directing other contractors' operations, and
- (h) resolving technical controversies.

(2) This section B does not prohibit a contractor providing systems engineering and technical direction, from developing or producing a system if the entire effort is conducted under a single contract.

C.Preparing specifications or work statements.

(1) If a contractor prepares and furnishes specifications for a specific acquisition of tangible supplies or information resources, or their components, that contractor shall not be allowed to furnish these items, either as a contractor or as a subcontractor at any tier, for a reasonable period of time including, at least, the duration of the initial contract for purchase of the items.

(2) If a contractor prepares, or assists in preparing, a work statement to be used in a specific acquisition of a system or services—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply the system, major components of the system, or the services, either as a contractor or as a subcontractor at any tier, unless (a) the acquisition is a sole source

under R. 19-445.2105; (b) it has participated in the development and design work; or (c) more than one contractor has been involved in preparing the work statement.

D. Providing evaluation of offers. If a contractor evaluates or supports the evaluation of a bid or proposal for a contract with a governmental body, that contractor and its affiliates are barred from performing under that contract as either a contractor or as a subcontractor at any tier.

E. Procurement Officer Responsibilities.

(1) The responsible procurement officer shall (a) analyze planned acquisitions in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and (b) review plans to avoid, neutralize, or mitigate significant potential conflicts before contract award.

(2) The responsible procurement officer shall determine whether the apparent successful offeror has an organizational conflict of interest. The responsible procurement officer shall award the contract to the apparent successful offeror unless (i) a conflict of interest is determined to exist that cannot be avoided or mitigated, or (ii) the conflict is waived as provided in section F. Before determining to withhold award based on conflict of interest considerations, the procurement officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond.

F. Waiver. With respect to the award of an individual contract, the using agency may waive an organizational conflict of interest by determining that the application of these rules in a particular situation would not be in the State's interest. A determination to waive a conflict of interest must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or her designee above the level of the agency's senior procurement official. If a waiver involves an acquisition with a value that exceeds either the limits of the governmental body's authority under Section 11-35-1210(1) or one million dollars, the appropriate Chief Procurement Officer must concur in the waiver and the written determination must be published with the notice of intent to award. Any report required by R. 19-445.2020A(2) must include every waiver addressing a procurement during the audit period.

G. The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies to identify organizational conflicts of interest and techniques to avoid or mitigate them.

#### 19-445.2135. Conditions for Use of Multi-term Contracts.

A. General.

A multi-term contract is a contract for the acquisition of supplies, services, or information technology for more than one year. A contract is not a multi-term contract if no single term exceeds one year and each term beyond the first requires the governmental body to exercise an option to extend or renew. A multi-term contract is appropriate when it is in the best interest of the State to obtain uninterrupted services for a period in excess of one year, where the performance of such services involves high start up costs, or when a changeover of service contracts involves high phase in/phase out costs during a transition period. The multi-term method of contracting is also appropriate when special production of definite quantities of supplies for more than one year is necessary to best meet state needs but funds are available only for the initial fiscal period. Special production refers to production for contract performance when it requires alteration in the contractor's facilities or operations involving high start up costs.

B. Objective.

The objective of the multi-term contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during changeover of service contracts.

C. Exceptions.

This Regulation 19-445.2135 applies only to contracts for supplies, services, or information technology and does not apply to contracts for construction.

D. Conditions for Use.

(1) A multi-term contract may be used if, prior to issuance of the solicitation, the Procurement Officer determines in writing that:

(a) Special production of definite quantities or the furnishing of long term services are required to meet state needs; or

(b) a multi-term contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(2) The following factors are among those relevant to such a determination:

(a) firms which are not willing or able to compete because of high start up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

(b) lower production cost because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;

(c) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality;

(d) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

(3) The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision.

#### E. Solicitation.

The solicitation shall state:

(1) the estimated amount of supplies or services required for the proposed contract period;

(2) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

(3) that the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the state's rights or the contractor's rights under any termination clause in the contract;

(4) that the procurement officer of the governmental body must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;

(5) whether bidders or offerors may submit prices for:

(a) the first fiscal period only;

(b) the entire time of performance only; or

(c) both the first fiscal period and the entire time of performance;

(6) that a multi-term contract may be awarded and how award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared; and,

(7) that, in the event of cancellation as provided in (E) (3) of this subsection, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

#### F. Award.

Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal period that award on the basis of prices for the first period does not permit the successful bidder or offerer to "buy in", that is give such bidder or offeror an undue competitive advantage in subsequent procurements.

#### G. Maximum Contract Periods

Every contract with a total potential duration in excess of five years must be approved as required by Section 11-35-2030(4) or Section 11-35-2030(5). No solicitation shall be issued for a contract with a total potential duration in excess of five years, nor shall any contract with a total potential duration in excess of five years be awarded pursuant to Section 11-35-1560, until such approval is granted.

#### 19-445.2141. Commercial Products.

##### A. Definitions.

(1) Commercial product has the meaning stated in Section 11-35-1410, and does not include printing or insurance.



(2) Commercially available off-the-shelf product (“COTS”) has the meaning stated in Section 11-35-1410, and does not include printing or insurance.

B. General.

(1) Agencies shall conduct market research to determine whether commercial products or COTS are available that could meet agency requirements, and should endeavor to acquire commercial products or COTS when they are available to meet agency needs (see R. 19-445.2140D (Preference for commercially available products)).

(2) Consistent with Section 11-35-1535(A)(2), the competitive negotiations source selection method may not be used to acquire only commercially available off the shelf products.

C. Price reasonableness.

(1) An advantage of COTS is that a competitive market, evidenced by substantial commercial sales, helps to determine price reasonableness. Substantial sales of a COTS product may establish catalog prices (see Section 11-35-1410) and market prices. Market prices are current prices that are established in the usual and ordinary course of trade between buyers and sellers (see R. 19-445.2120A(3)). A characteristic of both catalog prices and market prices is that they can be substantiated from sources independent of the offeror—for example, through market research.

(2) “Items customarily sold in bulk” means products that are loaded and carried in bulk without mark or count. COTS does not include bulk materials, like fuel and grain, because the prices for those items fluctuate, making it difficult or impossible to rely on short-term pricing to establish price reasonableness for purchase contracts that may be for a longer term.

D. Purchase description or specification.

The agency’s purchase description must contain sufficient detail for potential offerors of commercial products or COTS to know which products may be suitable. Generally, an agency’s specification for COTS should describe the type of product to be acquired and explain how the agency intends to use the product in terms of function to be performed, performance requirement or physical characteristics. Describing the agency’s needs in these terms allows offerors to propose products that will best meet the State’s needs.

E. Simplified purchasing procedures for COTS.

(1) Section 11-35-1550(2)(b) authorizes the use of simplified procedures for the acquisition of supplies and information resources in amounts up to \$100,000, if the responsible procurement officer reasonably expects, based on the nature of the supplies or information resources sought, and on market research, that offers will include only COTS. The purpose of these simplified procedures is to vest procurement officers with additional procedural discretion and flexibility, so that COTS acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the State and industry (see R. 19-445.2100).

(2) The procurement officer should be aware of customary commercial terms and conditions when pricing COTS. COTS prices are affected by factors that include, but are not limited to, speed of delivery, length and extent of warranty, limitations of seller’s liability, quantities ordered, length of the performance period, and specific performance requirements. The procurement officer should review the using agency’s standard contract terms and conditions, along with commercial terms appropriate for the acquisition of the particular item. The procurement officer should consider avoiding terms inconsistent with commercial practice, unless those terms are required by law (see R. 19-445.2143) or are essential to the using agency’s requirements.

(3) Section 11-35-2040 provides that COTS purchases made using any of the simplified procedures of Section 11-35-1550 are exempt from a number of statutory provisions that vendors have complained are overly burdensome. The procurement officer should consider Section 11-35-2040 and R. 19-445.2143 when preparing the solicitation or written request for quotes.

(4) Regulation 19-445.2120B(3) prohibits requiring cost or pricing data when acquiring a commercial product, including COTS, unless the purchase or modification exceeds the thresholds established in that section and the procurement officer determines in writing that no other basis exists to establish price reasonableness.

F. The appropriate Chief Procurement Officer may develop and issue guidance, including solicitation forms, which may be used by agencies acquiring COTS using small purchase procedures.

19-445.2143. Contract clauses and administration.

A. Contracts formed pursuant to the Consolidated Procurement Code are deemed to incorporate all applicable provisions thereof and the ensuing regulations.

B. Prohibited Terms. Unless otherwise specifically provided by or authorized by law, if a contract contains any of the following terms, the term shall be void, and the contract is otherwise enforceable as if it did not contain such term or condition:

(1) Terms (a) subjecting the State of South Carolina or its agencies to the jurisdiction of the courts of other states; or (b) requiring the State of South Carolina or its agencies to bring or defend a legal claim in a venue outside this State. (Sections 11-35-2050 and -4230)

(2) Terms limiting the time in which the State of South Carolina or its agencies may bring a legal claim under the contract to a period shorter than that provided in South Carolina law. (Sections 11-35-4230(2) and 15-3-140)

(3) Terms imposing a payment obligation, including a rate of interest for late payments, inconsistent with the terms of Section 11-35-45.

(4) Terms that require the State to defend, indemnify, or hold harmless another person. (Section 11-35-2050)

(5) Terms requiring that the contract be governed or interpreted by other than South Carolina law. (Section 11-35-2050)

C. A material change is a change order or contract modification that is beyond the general scope of the original contract, such that the subject of the modification should be competitively procured absent a valid sole-source justification. Material changes are inconsistent with the underlying purposes and policies of this code. The appropriate Chief Procurement Officer may develop and issue guidance and procedures for evaluating whether a change order or modification is material.

19-445.2145. Construction, Architect Engineer, Construction Management, and Land Surveying Services.

A. through B. (No Changes)

C. Bonds and Security.

(1) Bid Security. Bid Security required by Section 11-35-3030 shall be a certified cashier's check or a bond, in a form to be specified in the Manual for Planning and Execution of State Permanent Improvements - Part II, provided by a surety company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney in fact to bind the surety.

(2) Contract Performance and Payment Bonds. The contractor shall provide a certified cashier's check in the full amount of the Performance and Payment Bonds or may provide, and pay for the cost of, Performance and Payment Bonds in a form to be specified in the Manual for Planning and Execution of State Permanent Improvements-Part II. Each bond shall be issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. In the case of construction under \$50,000, the agency may, upon written justification and with the approval of the Office of the State Engineer, allow the use of a "B+" rated bond when bid security is required. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney in fact to bind the surety.

D. through G. (no changes)

H. With regard to Section 11-35-3310, the State Engineer's Office will establish working procedures for indefinite quantity contracts for professional services, and shall include them in the Manual for Planning and Execution of State Permanent Improvements-Part II. With regard to Section 11-35-3320, the State

Engineer's Office will establish working procedures for task order contracts for construction services and shall include them in the Manual for Planning and Execution of State Permanent Improvements-Part II.  
I. through N. (no changes)



Document No. \_\_\_\_\_  
**STATE FISCAL ACCOUNTABILITY AUTHORITY**  
**CHAPTER 19**

Statutory Authority: 1976 Code Sections 11-35-10 et seq., and 2019 Act No. 41, Section 76

19-445. Consolidated Procurement Code.

**Preamble:**

The Consolidated Procurement Code authorizes the State Fiscal Accountability Authority to promulgate regulations governing the procurement, management, and control of any and all supplies, services, information technology, and construction to be procured by the State and any other regulations relating to implementation of Title 11, Chapter 35 (Sections 11-35-60 & -540(1)). The Authority previously submitted proposed regulations for legislative approval on January 8, 2019, as Document 4861. Pursuant to Section 76 of 2019 Act No. 41, the Authority published interim regulations in the State Register on August 23, 2019. The Act also requires the Authority to publish proposed final regulations it will follow to implement changes; accordingly, these proposed regulations include the text of the previously published interim regulations. In addition, the proposed regulation will address various matters regarding Regulation 19-445 and procurement in general.

Notice of Drafting for the proposed amendments was published in the State Register on July 26, 2019.

Section by Section Discussion

**19-445.2000. State Procurement Regulations.**

Sections A and B include two technical changes reflecting the Code Commissioner's reference to the authority's five-member board. No substantive change is intended. Section C adds two definitions — "certification" and "responsible procurement officer"— for clarity. *Note: these changes were previously submitted in Document 4861.*

Section B also includes an editorial change reflecting restructuring and the transfer of surplus property responsibilities to the Department of Administration. Definitions of "head of purchasing agency" and "certification" in section C have been revised to reflect changes made by Act No. 41. No substantive change is intended.

Former section E (Effective Date) has been deleted.

New section E is an interpretative regulation that reflects long standing administrative application of the Procurement Code and provides concise, accessible, guidance on the Code's application. Item 1 recognizes that statutory schemes other than the Procurement Code may govern a transaction. Item 2 recognizes that application of the Code doesn't depend on how contracts are documented, but what the transaction actually accomplishes. Item 3 explains the Code's application revenue generating contracts. Item 4 effectively applies Item 3 in the context of financed construction acquisitions. Item 5 explains how the Procurement Code relates to acquisitions involving an interest in real property.

Most procurements must be advertised. New Section F explains the minimum contents of the advertisement and explains how it applies to the public notices required by Act No. 41 for sole source and emergency procurements.

**19-445.2010. Disclosure of Procurement Information.**

Deletion of section A reflects the enactment of § 11-35-410(F) by Act No. 41. Section D is amended to reflect the addition of § 11-35-1535 by Act No. 41. Section E is modified to reflect existing business practices; agency staff participating in activities such as negotiations or proposal evaluation must sign an acknowledgement of their obligations under rules such as the State Ethics Act. Section E also implements new § 11-35-1535.



19-445.2020. Certification.

Section A eliminates “consulting services” as a category for certification and clarifies that certification for construction includes construction related professional services. Revisions to section A(3) and renumbered section B implement changes made to § 11-35-1210 by Act No. 41. Specifically, these changes identify the preconditions for the delegation of authority by the Director of the Division of Procurement Services. Existing section B has been renumbered as section D with non-substantive editorial changes. *Note: Section A(3) and renumbered section C include editorial changes reflecting restructuring that were previously submitted in Document 4861.*

19-445.2030. Competitive Sealed Bidding—The Invitation for Bids.

These changes are technical and merely restate existing law. The text proposed to be added to current paragraph (5) is taken verbatim from § 11-35-1520(3). Revised R. 19-445.2095, *post*, makes this subsection equally applicable to requests for proposals.

*Note: these revisions, with non-substantive editorial changes, were previously submitted in Document 4861.*

19-445.2042. Pre-Bid Conferences.

Section D accommodates out-of-town prospective contractors by encouraging agencies to allow participation in pre-bid conferences by electronic means.

19-445.2045. Receipt, Safeguarding, and Disposition of Bids.

Act No. 41 amended § 11-35-410(C) to require regulations directing the disposition of responses when no award is made. R. 19-445.2045C accomplishes this. The regulation reflects current practice of the Division of Procurement Services and is based in part on 2002 ABA Model Procurement Regulation R3-301.05.

*Note: certain of these changes were previously submitted in Document 4861.*

19-445.2065. Rejection of Bids.

Proposed R. 19-445.2045C eliminates the need for section D.

*Note: these changes were previously submitted in Document 4861.*

19-445.2080. Bid Reductions.

The existing text of R. 19-445.2080 is removed to reflect the repeal of § 11-35-1520(8).

The new text of R. 19-445.2080 is added to confirm the authority of procurement staff to accept a voluntary reduction in price from a low bidder. This change dovetails with the repeal by Act 41 of the 5th sentence of § 11-35-1520(10), which addressed negotiations after a competitive sealed bid, a topic which is generally addressed by § 11-35-1540.

19-445.2090. Award.

Section B is modified to reflect changes Act No. 41 made to § 11-35-1520(10) regarding notice of a revised posting date.

19-445.2095. Competitive Sealed Proposals.

R. 19-445.2095A clarifies that the reasonable notice required by the Consolidated Procurement Code and current regulations for preparation of bids also applies to competitive sealed proposals.

R. 19-445.2095B and -2095C make technical changes to the current sections.

*Note: these changes were previously submitted in Document 4861.*

R. 19-445.2095E is modified to reflect Act No. 41’s repeal of § 11-35-1520(8).

New section K applies to the process of negotiations the same set of controls that apply to the process of conducting of discussions (see R. 19-445.2095I(2)) and provides for the identification of negotiation objectives before initiating negotiations.

New section L incorporates notice provisions in R. 19-445.2090(B), applicable when posting an award on competitive sealed bids is delayed, to like delays in awarding on competitive sealed proposals.

#### 19-445.2097. Rejection of Proposals.

R. 19-445.2095B makes R. 19-445.2045C applicable to RFPs, thus eliminating the need for section D.

#### 19-445.2099. Competitive Negotiations.

This regulation is completely new. It implements the addition of § 11-35-1535 by Act No. 41, which authorizes the use of competitive negotiations as a source selection procedure. The regulation addresses post-opening amendments to the solicitation; evaluation factors; evaluation process; exchanges with offerors, including clarifications and negotiations; limitations on exchanges; tradeoffs, and the award process.

#### 19-445.2100. Small Purchases and Other Simplified Purchasing Procedures.

The changes to this regulation implement the changes made to § 11-35-1550 by Act No. 41. In large measure, this regulation explains, but does not modify, the processes outlined in § 11-35-1550. Paragraph A(6) requires that notice of an award must be communicated to all bidders if the small purchase exceeds \$50,000.

#### 19-445.2105. Sole Source Procurements.

Changes to section C clarify and simplify requirements for a written determination, and incorporate the new notice requirements in Act No. 41. Section D makes clear that statutory requirements for competitive procurements apply likewise to sole source contracts.

#### 19-445.2110. Emergency Procurements.

New section F incorporates the notice requirements in Act No. 41.

#### 19-445.2115. Information Technology Procurements.

The repeal of sections A and B of R. 19-445.2115 reflect the repeal of § 11-35-1580 by Act No. 41.

#### 19-445.2120. Cost or Pricing Data.

Changes to this regulation help implement the streamlined contracting procedures available for commercial products.

#### 19-445.2125. Responsibility of Bidders and Offerors.

New subsection D(2) implements changes in Act No. 41 to § 11-35-1529, governing reverse auctions.

#### 19-445.2127. Organizational Conflicts of Interest.

Act No. 41 adds § 11-35-1840, which expressly provides for the adoption of regulations dealing with organizational conflicts of interest. This is a new regulation.

Outside of construction, the State's procurement laws do not currently address organizational conflicts of interest. An organizational conflict of interest (OCI) may prevent a contractor from providing impartial advice or service to the government; or it may create an unfair competitive advantage favoring one offeror over others. An offeror with a significant OCI may be disqualified from award of a contract, or may be subject to restrictions on additional work to mitigate the conflict. Since an OCI usually exists without any wrongdoing by an offeror or contractor, it is not a matter of responsibility. Similarly, since a contractor with an OCI may be positioned to perform exactly as the State requires, it is also not a matter of responsiveness.

The proposed new regulation provides general policy concepts and guidance on the issue of OCIs and leaves to the chief procurement officers the task of developing specific procedures to implement those concepts.

R. 19-445.2127A defines OCI and describes its potentially deleterious impact on the acquisition process. It underscores the need for analysis to identify potential conflicts and to plan for its mitigation in advance of award. The importance of judgment and common sense is emphasized.

R. 19-445.2127B identifies systems engineering and technical direction as circumstances where OCI can create a performance risk for the State, as well as a potential unfair competitive advantage. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore, this contractor should not be in a position to make decisions favoring its own products or capabilities.

R. 19-445.2127C identifies another situation where an OCI should be disqualifying for subsequent work: where the State's contractor furnishes specifications or a statement of work. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way the State can be assured of getting unbiased advice as to the content of the specifications and can avoid allegations of favoritism in the award of contracts.

R. 19-445.2127D states the common-sense rule that a contractor should not be hired to evaluate its own work or that of a competitor.

R. 19-445.2127E outlines the procurement officer's responsibilities regarding OCI, and emphasizes the need to address OCI early in the acquisition process. It also establishes a default of award to the most advantageous offeror, notwithstanding an OCI, unless the OCI cannot be avoided or mitigated. In the latter case, the procurement officer must provide the conflicted offeror an opportunity to respond.

R. 19-445.2127F permits an agency, within its certification authority, to waive an OCI in response to a written request, detailing the extent of the conflict and reasons for its waiver.

Finally, R. 19-445.2127G authorizes the chief procurement officers to develop policies and procedures to detect OCI and techniques to avoid or mitigate them.

#### 19-445.2135. Conditions for Use of Multi-term Contracts.

Revisions to this regulation clarify existing practice for approving contracts with extended terms, and implement the express requirement in amended § 11-35-2030 that approval must be had prior to issuing the solicitation.

#### 19-445.2141. Commercial Products.

Act No 41 expresses a legislative finding "that acquisition policies that more closely resemble those of the commercial marketplace, encourage the acquisition of commercial items, and, where possible, allow use of terms and conditions accepted in the marketplace, will promote efficiency and economy in contracting and avoid unnecessary burdens for agencies and contractors." The Act defines "commercial product" and "commercially available off-the-shelf products," or COTS products (§§ 11-35-1410(1) and (2)). It authorizes streamlined procedures for purchasing COTS products up to \$100,000 (§ 11-35-1550(2)(b)). And it exempts sellers of COTS products from compliance with certain laws unrelated to competitive purchasing (§ 11-35-2040).

Procurement regulations have long emphasized the State's preference for commercially available products (R. 19-445.2140D). New R. 19-445.2141 expands on that policy and provides clarity and guidance to implement the legislature's COTS enactments.

Section A of the regulation restates and clarifies the definitions of COTS product and commercial product.

Section B underscores the importance of market research in developing a purchasing strategy for COTS products.

Section C explains how the commercial marketplace may effectively establish price reasonableness for COTS products.

Section D expands on instructions for COTS-friendly specifications already expressed in R. 19-445.2140D.

Section E explains simplified procedures for buying COTS products, including considerations to eliminate unnecessary restrictions on vendors who wish to sell to the State.

Finally, R. 19-445.2141H authorizes the chief procurement officers to develop guidance and forms implementing the statutory and regulatory scheme.

19-445.2143. Contract clauses and administration.

Act No. 41 includes new § 11-35-2050, which expressly makes unenforceable against the State certain specific contract terms that are contrary to law. It also includes new § 11-35-1610, prohibiting contract changes inconsistent with the Code or ensuing regulations. This new regulation implements those statutory changes.

Section A states long-standing legal precedent that contracts formed pursuant to the Consolidated Procurement Code are deemed to include all its mandatory provisions.

Section B explains and implements § 11-35-2050.

Section C implements § 11-35-1610 by defining the material change doctrine and declaring that such changes are inconsistent with the Code's underlying policies. The Procurement Review Panel expressly recognized this doctrine in *IN RE: South Carolina Patients' Compensation Fund v. Modus21, LLC*, Case No. 2013-5.

19-445.2145. Construction, Architect Engineer, Construction Management, and Land Surveying Services.

Revisions to R. 19-445.2145 are all conforming changes reflecting Act No. 41's amendments.

Section C changes reflect the Act's revised thresholds for required bonds.

Section H reflects the Act's repeal of construction indefinite delivery contracts from § 11-35-3310 and its addition of task order contracts in § 11-35-3320

19-445.2152. Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.

Technical change only. No substantive change intended.

*Note: these changes were previously submitted in Document 4861.*

19-445.3000. School District Procurement Codes; Model.

Technical change only. No substantive change intended.

*Note: these changes were previously submitted in Document 4861.*

#### **Notice of Public Hearing and Opportunity for Public Comment:**

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the S.C. Code, as amended, such hearing will be held on October 15, 2019, at 10:00 AM in Room 252 of the Edgar A. Brown Building, State House Grounds, Columbia, South Carolina. Persons desiring to make oral comment at the hearing are asked to provide written copies of their presentation for the record. If a qualifying request pursuant to Section 1-23-110(A)(3) is not timely received, the hearing will be canceled.

Written comments, requests for the text of the proposed amendments or any other information, and any requests for a public hearing, should be submitted to Office of General Counsel, 1201 Main Street, Suite 420, Columbia, S.C. 29201 or to [regulations@mmo.state.sc.us](mailto:regulations@mmo.state.sc.us), on or before 5:00 PM on September 24, 2019. Copies of the text of the proposed amendments for public notice and comment are available at <https://procurement.sc.gov/review-period-draft>.

#### **Preliminary Fiscal Impact Statement:**

No additional state funding is requested. The State Fiscal Accountability Authority estimates that no additional costs will be incurred by the State and its political subdivisions in complying with the proposed revisions to Regulation 19-445.

**Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION: South Carolina Consolidated Procurement Code

Purpose: These regulations are proposed to clarify and improve the procedures used in procurement.

Legal Authority: Title 11, Chapter 35 of the South Carolina Code of Laws

Plan for Implementation: The proposed amendments would be incorporated within R.19-445 upon publication in the State Register as a final regulation. The proposed amendments will be implemented in the same manner in which the existing regulation is implemented. As part of its routine training program, the State Fiscal Accountability Authority will offer training classes to inform government officials regarding the impact of the proposed regulations.

**DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:**

As reflected in Section 11-35-20, the Consolidated Procurement Code was enacted to consolidate, clarify, and modernize the law governing procurement in this State and to permit the continued development of explicit and thoroughly considered procurement policies and practices. These regulations are designed to achieve those purposes and policies, consistent with best practices developed through experience. Accordingly, the State Fiscal Accountability Authority determined that the proposed amendments to the state's procurement regulations are needed and reasonable.

**DETERMINATION OF COSTS AND BENEFITS:**

There will be no increased cost to the State or its political subdivisions, nor will the proposed amendments result in any increased cost to the business community. The proposed amendments will benefit covered governmental entities by enhancing the integrity of the process, improving efficiency, and allowing sound procurement practices that enable government to acquire better value for the taxpayer's dollars.

**UNCERTAINTIES OF ESTIMATES:**

There are no uncertainties of estimates relative to the costs to the State or its political subdivisions

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

The proposed regulations have no effect on the environment or on public health.

**DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:**

There will be no detrimental effect on the environment or public health if the regulations are not implemented.

**Statement of Rationale:**



The Consolidated Procurement Code expressly contemplates the continued development of explicit and thoroughly considered procurement policies and practices. The proposed changes are needed to accommodate developments in the law and in best practices for government procurement, and to further consolidate, clarify, and modernize the law governing procurement in this State. S.C. Code Section 11-35-20(d).

**Instructions:** Repeal R. 19-445.2000E (Effective Date). In an Editor’s Note to R. 19-445.2015, include the following text: “Any changes to this R. 19-445.2015 shall apply only to contracts awarded after the first Monday in September following the legislative session during which they are approved.”

\*\*\*\*

The following sections of Regulation 19-445 are modified as provided below. All other items and sections remain unchanged. Additional instructions, as appropriate, follow individual sections of Regulation 19-445 below.

~~Indicates Matter Stricken~~

Indicates New Matter

**Text:**

19-445. Consolidated Procurement Code.

(Statutory Authority: 1976 Code Section 11-35-10 et seq., and 2019 Act No. 41, Section 76)

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#### 19-445.2000. State Procurement Regulations.

##### A. General.

These Regulations issued by the South Carolina ~~Budget and Control Board~~ State Fiscal Accountability Authority, hereafter referred to as the ~~Board~~ board, establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of supplies, services, information technology, and construction, as applicable, under the authority of the South Carolina Consolidated Procurement Code, as amended. These Regulations are designed to achieve maximum practicable uniformity in purchasing throughout state government. Hence, implementation of the Procurement Code by and within governmental bodies, as defined in Section 11-35-310(18) of the Procurement Code, shall be consistent with these Regulations. Nothing contained in these Rules and Regulations shall be construed to waive any rights, remedies or defenses the State might have under any laws of the State of South Carolina.

##### B. Organizational Authority.

(1) The Chief Procurement Officers acting on behalf of the ~~Board~~ board shall have the responsibility to audit and monitor the implementation of these Regulations and requirements of the South Carolina Consolidated Procurement Code. In accordance with Section 11-35-510 of the Code, all rights, powers, duties and authority relating to the procurement of supplies, services, and information technology and to the management, control, and warehousing, ~~sale and disposal~~ of supplies, construction, information technology, and services now vested in or exercised by any governmental body under the provisions of law relating thereto, and regardless of source funding, are hereby vested in the appropriate chief procurement officers. In exercising this authority, the chief procurement officers shall afford each using agency

reasonable opportunity to participate in and make recommendations with respect to procurement matters affecting the using agency. The chief procurement officers shall be responsible for developing such organizational structure as necessary to implement the provisions of the Procurement Code and these Regulations.

(2) Materials Management Office: The Materials Management Officer is specifically responsible for:

(a) developing a system of training and certification for procurement officers of governmental bodies in accordance with Section 11-35-1030;

(b) recommending differential dollar limits for direct procurements on the basis of but not limited to the following:

(1) procurement expertise,

(2) commodity,

(3) service,

(4) dollar;

(c) performing procurement audits of governmental bodies in accordance with Sections 11-35-70 and 11-35-1230 of the Procurement Code.

(d) overseeing acquisitions for the State by the State Procurement Office.

(e) coordinating with the Information Technology Management Office in accordance with Section 11-35-820;

(f) overseeing the acquisition of procurements by the State Engineer in accordance with Section 11-35-830.

(3) Office of Information Technology Management: The Office of Information Technology Management shall be responsible for all procurements involving information technology pursuant to Section 11-35-820 of the Procurement Code.

(4) Office of State Engineer: The Office of State Engineer under the direction and oversight of the Materials Management Officer shall be responsible for all procurements involving construction, architectural and engineering, construction management, and land surveying services pursuant to Section 11-35-830 of the Procurement Code.

#### C. Definitions

(1) "Head of purchasing agency" means the agency head, that is, the individual charged with ultimate responsibility for the administration and operations of the governmental body. Whenever the South Carolina Consolidated Procurement Code or these Regulations authorize either the chief procurement officer or the head of the purchasing agency to act, the head of the purchasing agency is authorized to act only within the limits of the governmental body's authority under Section ~~11-35-1550(1) or its certification as granted by Board under Section 11-35-1210(1)~~, except with regard to acts taken pursuant to Section 11-35-1560 and 11-35-1570.

(2) "Procuring Agency" means "purchasing agency" as defined in Section 11-35-310.

(3) "Certification" means the authority delegated by the board or the Director of Procurement Services to a governmental body to make direct procurements not under term contracts. Certification is granted pursuant to Section 11-35-1210 and R.19-445.2020.

(4) "Responsible procurement officer" means the individual employed by either the purchasing agency or the chief procurement officers, as applicable, assigned to serve as the procurement officer, as defined in Section 11-35-310, responsible for administering the procurement process. Typically, the responsible procurement officer will be identified by name in the solicitation, as amended, and any subsequent contracts, as amended.

#### D. Duty to Report Violations

All governmental bodies shall comply in good faith with all applicable requirements of the consolidated procurement code and these procurement regulations. When any information or allegations concerning improper or illegal conduct regarding a procurement governed by the consolidated procurement code comes to the attention of any employee of the State, immediate notice of the relevant facts shall be transmitted to the appropriate chief procurement officer.

#### E. Application of the Procurement Code. Effective Date.

Except as otherwise provided herein, these regulations are effective upon publication in the State Register. The following additions or revisions to this regulation 19-445 apply only to solicitations issued after the first Monday in September following the legislative session during which they are approved: Sections 2010, 2015, 2050, 2095, 2097, 2105, 2120, 2180.

(1) Other Required Approvals. Approval pursuant to the Code or regulations does not substitute for any other approval required by law. For example, if the Procurement Code applies to an acquisition and the overall arrangement involves either construction or the granting or acquiring any interest in real property, other independent processes or approval may be required by law, e.g., Sections 1-11-55, 1-11-56, 1-11-58, 1-11-65, or Chapter 47 of Title 2.

(2) Multiple Instruments Not Determinative. The application of the Code does not depend on whether the parties memorialize the overall transaction into one or more contractual instruments. As a remedial statute, the Consolidated Procurement Code should be construed liberally to carry out its purposes. (Section 11-35-20) Accordingly, when multiple written agreements are part of an overall transaction to accomplish an overall purpose, the documents will be considered together for purposes of determining whether the Consolidated Procurement Code applies, even if the instruments have not been executed simultaneously or the parties are not the same.

(3) Revenue generating contracts. The Consolidated Procurement Code “applies to every procurement . . . by this State under contract acting through a governmental body . . .” (Section 11-35-40(2)) “The term ‘contract’ means ‘all types of state agreements, regardless of what they may be called, for the procurement . . . of . . . supplies, services, information technology, or construction.’” (Section 11-35-310(8)) In pertinent part, the term “procurement” is defined as “buying, purchasing, renting, leasing, or otherwise acquiring any . . . construction.” (Section 11-35-310(25) (emphasis added.)) Accordingly, the Procurement Code applies even though the governmental body does not make a payment of money. Without limitation, examples of such contracts include revenue-generating contracts, concession agreements, and contracts structured as a design-build-finance-operate-maintain project. (Section 11-35-2910(8))

(4) Financed Construction. The Consolidated Procurement Code “applies to every procurement . . . by this State under contract acting through a governmental body . . .” (Section 11-35-40(2)) The term “contract” means “all types of state agreements, regardless of what they may be called, for the procurement . . . of . . . construction.” (Section 11-35-310(18)) In pertinent part, the term “procurement” is defined as “buying, purchasing, renting, leasing, or otherwise acquiring any . . . construction.” (Section 11-35-310(25) (emphasis added.)) The term “construction” is defined as “the process of building . . . any . . . public improvements of any kind to real property.” (Section 11-35-310(7)) Read together, and absent an applicable exclusion (e.g., gifts) or exemption (e.g., Section 11-35-710), the Procurement Code applies to every acquisition of the process of improving real property by a governmental body, whether or not the acquisition involves an expenditure of money. Such acquisitions may be memorialized in a number of related agreements and, without limitation, may be structured as an in-kind exchange, lease-purchase, lease with purchase option, lease-lease-back, sale-lease-back, installment-purchase, or so-called public-private-partnership.

(5) Acquisition involving an interest in real property. Generally, the Procurement Code does not apply to an acquisition solely of an interest in real property. For example, the Procurement Code does not apply to an acquisition of land, even though it includes pre-existing improvements and fixtures (i.e., not built-to-suit), nor does it apply to an acquisition of a leasehold estate, even though it includes complementary subordinate supplies, services, information technology, or construction, e.g., landlord-performed tenant improvements for a lease not-to-own, building security, janitorial services). In contrast, the Procurement Code does apply to an acquisition of an interest in real property if the transaction also involves a substantial acquisition of supplies, services, information technology, or construction. For example, and without limitation, the Procurement Code would apply to an acquisition of food services, even though it involved the agency leasing its land to the contractor. As another example, as discussed in R. 19-445.2000E(4), a lease-purchase of custom-built, new construction must be acquired pursuant to the Procurement Code. While not necessarily conclusive, the primary objective of the transaction may be determinative.

F. Notice.

(1) When adequate public notice is required by Article 5, the notice must contain sufficient information to allow a prospective offeror to make an informed business judgment as to whether she should compete (or would have competed) for the contract. At minimum the notice must contain the following information, as applicable:

(a) a description of the item(s) to be acquired;

(b) how to obtain a copy of the solicitation document or the anticipated contract;

(c) when and where responses are due; and

(d) the place of performance or delivery.

(2) In addition to the information above, the notices required by Section 11-35-1560 and Section 11-35-1570 must include the contract dollar amount of the proposed contract.

19-445.2010. Disclosure of Procurement Information.

A. ~~Reserved. If requested in writing by an actual offeror prior to final award, the responsible procurement officer shall, within ten days of the receipt of any such request, make documents directly related to the procurement activity not otherwise exempt from disclosure available for inspection at an office of the responsible procurement officer.~~

B. Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall forward or refer all requests for information regarding the procurement to the responsible procurement officer. The procurement officer will respond to the request.

C. Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall not engage in conduct that knowingly furnishes source selection information to anyone other than the responsible procurement officer, unless otherwise authorized in writing by the responsible procurement officer. "Source selection information" means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (1) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (2) source selection plans, (3) technical evaluation plans, (4) technical evaluations of proposals, (5) cost or price evaluations of proposals, (6) information regarding which proposals are determined to be reasonably susceptible of being selected for award, (7) rankings of responses, proposals, or competitors, (8) reports, evaluations of source selection committees or evaluations panels, (9) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

D. ~~Throughout the competitive sealed proposal process~~ In procurements conducted pursuant to Section 11-35-1530 or Section 11-35-1535, state personnel with access to proposal information shall not disclose either the number of offerors or their identity prior to the issuance of an award or notification of intent to award, whichever is earlier, except as otherwise required by law.

E. Prior to the issuance of an award or notification of intent to award, whichever is earlier, the procurement officer shall not release ~~a proposal to a person~~ any individual information obtained in response to an RFP, without first obtaining from that ~~person~~ individual a written agreement, in a form approved by the responsible chief procurement officer, regarding restrictions on the use and disclosure of such information ~~proposals~~. Such agreements are binding and enforceable. Before allowing any individual to perform any role in discussions, negotiations, evaluation, or the source selection decision in a procurement conducted pursuant to Section 11-35-1530 or Section 11-35-1535, the responsible procurement officer must obtain from that individual, in a form approved by the appropriate chief procurement officer, a written acknowledgement of compliance and an agreement to comply with rules designed to protect the integrity of the procurement process.

F. The release of a proposal to non-state personnel for evaluation does not constitute public disclosure or a release of information for purposes of the Freedom of Information Act.

G. Except as prohibited by law, and subject to section 2200, state contracts may include clauses restricting the state's release of documents and information received from a contractor if those documents are exempt from disclosure under applicable law.

H. Subject to item (E), any person may furnish source selection information to the Office of the State Engineer. The procurement officer shall provide to the Office of the State Engineer any information it requests regarding a procurement.

I. Non-Public Solicitations. In accordance with Section 11-35-410(E), information that forms a part of a specific solicitation need not be publicly available if (a) the information is otherwise exempt from disclosure by law (e.g., Chapter 4, Title 30 (The Freedom of Information Act)), (b) the information is available to any prospective offeror that has executed a nondisclosure agreement, and (c) the appropriate chief procurement officer has approved the use and terms of a non-disclosure agreement (NDA) for the solicitation at issue. Prior to use in a specific solicitation, the terms of a proposed NDA must be published in the solicitation unless otherwise approved by the CPO. When requesting approval from the appropriate chief procurement officer, the governmental body must identify the information to be released pursuant to the NDA, explain the reason for the request, cite the legal basis for not making the information publicly available, and provide any other information requested by the CPO. If governmental body declines a person's request to enter an NDA and acquire the information thereto, it must immediately notify the CPO. Consistent with R. 19-445.2030, the applicable solicitation should instruct bidders how to comply with the NDA when submitting their offer. Information to be released pursuant to the NDA may also be released in accordance with R. 19-445.2200 (Administrative Review Protective Orders).

19-445.2020. Certification.

A. Review Procedures.

(1) Unless otherwise authorized by statute, any governmental body that desires to make direct agency procurements in excess of \$50,000.00, shall contact the Materials Management Officer in writing to request certification in any area of procurement, including the following ~~four~~ areas:

- (a) Supplies and services;
- (b) ~~Consultant services~~ Reserved;
- (c) Construction, ~~and including~~, subject to Section 11-35-3220(9), construction-related professional services;
- (d) Information technology.

(2) The Materials Management Officer shall review and report on the particular governmental body's entire internal procurement operation to include, but not be limited to the following:

(a) Adherence to provisions of the South Carolina Consolidated Procurement Code and these Regulations;

- (b) Procurement staff and training;
- (c) Adequate audit trails and purchase order register;
- (d) Evidences of competition;
- (e) Small purchase provisions and purchase order confirmation;
- (f) Emergency and sole source procurements;
- (g) Source selections;
- (h) File documentation of procurements;
- (i) Decisions and determinations made pursuant to section 2015;
- (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers;

(k) Adequacy of written determinations required by the South Carolina Consolidated Procurement Code and these Regulations;

(l) Contract administration;

(m) Adequacy of the governmental body's system of internal controls in order to ensure compliance with applicable requirements.

(3) The report required by item A(2) shall be submitted to the ~~Board board, along with the recommendation of the Materials Management Officer. Upon favorable review by the Materials Management Officer and approval by the Board, the particular governmental body may be certified and~~



~~assigned a dollar limit below which the certified governmental body may make direct agency procurements. Such certification shall be in writing and specify:~~

B. Approval

(1)(a) Upon recommendation by the Materials Management Officer, the Director of the Division of Procurement Services may authorized the particular governmental body to make direct agency procurements in the areas described in item A(1)(a) and A(1)(d), not under term contracts, in an amount up to one hundred fifty thousand dollars, provided a report required by item A(2) has been prepared within two years preceding the request.

(b) Upon recommendation by the State Engineer based on her knowledge of and experience with the particular governmental body, the Director of the Division of Procurement Services may authorize the particular governmental body to make direct agency procurements in the areas described in item A(1)(c), not under term contracts, in an amount up to one hundred fifty thousand dollars.

(c) The director shall advise the board in writing of all authorizations granted pursuant to this section B.

(2) If a governmental body requests certification above one hundred fifty thousand dollars, the request, along with the recommendation of the Materials Management Officer and the report required by item A(2), shall be submitted to the board. Upon recommendation by the Materials Management Officer and approval by the board, the particular governmental body may be certified and assigned a dollar limit below which the certified governmental body may make direct agency procurements not under term contracts.

(3) Certification under item B(1) or B(2) shall be in writing and specify:

- (a) The name of the governmental body;
- (b) Any conditions, limits or restrictions on the exercise of the certification;
- (c) The duration of the certification; and
- (d) The procurement areas in which the governmental body is certified.

C.(4) Using the criteria listed in item A(2) above, the office of each chief procurement officer shall be reviewed at least ~~ever~~ every five years by the audit team of the Materials Management Office. The results of the audit shall be provided to the appropriate chief procurement officer and the ~~designated board officer~~ Executive Director of the Authority.

~~DB.~~ Limitations.

(1) Such certification as prescribed in subsection ~~BA~~ shall be subject to any term contracts established by the chief procurement officers which requires mandatory procurement by all governmental bodies.

(2) Such certification as prescribed in subsection ~~BA~~ may shall be subject to maintaining an adequate staff of qualified or certified procurement officers.

19-445.2030. Competitive Sealed Bidding—The Invitation for Bids.

A. The invitation for bids shall be used to initiate a competitive sealed bid procurement and shall include the following, as applicable:

(1) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information;

(2) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description;

(3) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and

(4) Instructions to bidders on how to visibly mark information which they consider to be exempt from public disclosure.

~~B. (5)~~ Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. Accordingly, bid opening will be set to provide bidders a reasonable time to prepare their bids. Without limiting the foregoing requirements, the ~~The~~ date of opening may not be less than seven (7) days after notice of the solicitation is provided as required by Section 11-35-1520(3), unless

a shorter time is deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer or the head of the purchasing agency or his designee.

#### 19-445.2042. Pre-Bid Conferences.

A. Pre-bid conferences may be conducted. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Notice of the conference must be included in the notice of the solicitation required by Articles 5 or 9 of this code.

B. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment. A potential bidder's failure to attend an advertised pre-bid conference will not excuse its responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State.

C. Pre-bid conferences may not be made mandatory absent a written determination by the head of the governmental 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.

D. To minimize the time and expense imposed on industry by pre-bid conferences, the procurement officer should arrange for attendance by electronic means to the maximum extent practicable.

#### 19-445.2045. Receipt, and Safeguarding, and Disposition of Bids.

##### A. Procedures Prior to Bid Opening.

All bids (including modifications) received prior to the time of opening shall be kept secure and, except as provided in subsection B below, unopened. Necessary precautions shall be taken to insure the security of the bid. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to the state employees, and then only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

##### B. Unidentified Bids.

Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the Chief Procurement Officer, the procurement officer of the governmental body, or a designee of either officer. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the aforesaid official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids' number, and his signature, and then shall immediately reseal the envelope.

C. When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or if unopened, otherwise disposed of. Unopened bids or proposals are not considered to be public information under Chapter 4 of Title 30 (Freedom of Information Act).

#### 19-445.2065. Rejection of Bids.

A. Unless there is a compelling reason to reject one or more bids, award will be made to the lowest responsible and responsive bidder. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices. As a general rule after opening, an invitation for bids should not be canceled and readvertised due solely to increased quantities of the items being procured; award should be made on the initial invitation for bids and the additional quantity required should be treated as a new procurement.

##### B. Cancellation of Bids Prior to Award.

(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be cancelled. Invitations for bids may be

cancelled after opening, but prior to award, when such action is consistent with subsection A above and the procurement officer determines in writing that:

- (a) inadequate or ambiguous specifications were cited in the invitation;
  - (b) specifications have been revised;
  - (c) the supplies, services, information technology, or construction being procured are no longer required;
  - (d) the invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
  - (e) bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
  - (f) all otherwise acceptable bids received are at unreasonable prices;
  - (g) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
  - (h) for other reasons, cancellation is clearly in the best interest of the State.
- (2) Determinations to cancel invitations for bids shall state the reasons therefor.

C. Extension of Bid Acceptance Period.

Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement.

~~D. Return of Bids~~

~~If an invitation for bids is canceled, bids shall be returned to the bidders.~~

19-445.2080. ~~Clarifications with Bidders~~ Bid Reductions.

~~Apparent responsive bidder, as used in the source selection process, means a person who has submitted a bid or offer which obviously conforms in all material aspects to the solicitation. A procurement officer's decision regarding whether a bid is apparently responsive is final unless protested.~~

The responsible procurement officer may accept a voluntary reduction in price from a low bidder after bid opening but prior to award; provided that such reduction is not conditioned on, nor results in, the modification or deletion of any conditions contained in the invitation for bids.

19-445.2090. Award.

A. Application.

The contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids.

B. The procurement officer shall issue the notice of intent to award or award on the date specified in the solicitation, unless the procurement officer determines, and gives notice, that a longer review time is necessary. The procurement officer shall give notice of the revised posting date in accordance with Section 11-35-1520(10) ~~a time extension to each bidder by posting it at the location identified in the solicitation.~~

19-445.2095. Competitive Sealed Proposals.

A. Request for Proposals.

The provisions of ~~Regulation~~ Regulations 19-445.2030B and 19-445.2040 shall apply to implement the requirements of Section 11-35-1530 (2), Public Notice.

B. Receipt, ~~and Safeguarding, and Disposition~~ of Proposals.

The provisions of Regulation 19-445.2045 shall apply ~~for the receipt and safeguarding of~~ to competitive sealed proposals.

C. Receipt of Proposals.

The provisions of Regulation 19-445.2050(B) shall apply to ~~the receipt and safeguarding of competitive sealed~~ sealed proposals. For the purposes of implementing Section 11-35-1530(3), Receipt of Proposals, the following requirements shall be followed:

(1) Proposals shall be opened publicly by the procurement officer or his designee in the presence of one or more witnesses at the time and place designated in the request for proposals. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The Register of Proposals shall be certified in writing as true and accurate by both the person opening the proposals and the witness. The Register of Proposals shall be open to public inspection only after the issuance of an award or notification of intent to award, whichever is earlier. Proposals and modifications shall be shown only to State personnel having a legitimate interest in them and then only on a "need to know" basis. Contents and the identity of competing offers shall not be disclosed during the process of opening by state personnel.

(2) As provided by the solicitation, offerors must visibly mark all information in their proposals that they consider to be exempt from public disclosure.

D. [Repealed]

E. Clarifications and Minor Informalities in Proposals.

The provisions of ~~Sections 11-35-1520(8) and~~ Section 11-35-1520(13) shall apply to competitive sealed proposals.

F. Specified Types of Construction.

Consistent with Section 48-52-670, which allows the use of competitive sealed proposals, it is generally not practicable or advantageous to the State to procure guaranteed energy, water, or wastewater savings contracts by competitive sealed bidding.

G. Procedures for Competitive Sealed Proposals.

The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies using the competitive sealed proposal method of acquisition. Unless excused by the State Engineer, the Office of State Engineer shall oversee (1) the evaluation process for any procurement of construction if factors other than price are considered in the evaluation of a proposal, and (2) any discussions with offerors conducted pursuant to Section 11-35-1530(6) or subsection I below.

H. Other Applicable Provisions.

The provisions of the following Regulations shall apply to competitive sealed proposals:

(1) Regulation 19-445.2042, Pre-Bid Conferences,

(2) Regulation 19-445.2060, Telegraphic and Electronic Bids,

(3) Regulation 19-445.2075, All or None Qualifications,

(4) Regulation 19-445.2085, Correction or Withdrawal of Bids; Cancellation of Awards, and Cancellation of Awards Prior to Performance.

(5) Regulation 19-445.2137, Food Service Contracts.

I. Discussions with Offerors

(1) Classifying Proposals.

For the purpose of conducting discussions under Section 11-35-1530(6) and item (2) below, proposals shall be initially classified in writing as:

(a) acceptable (i.e., reasonably susceptible of being selected for award);

(b) potentially acceptable (i.e., reasonably susceptible of being made acceptable through discussions);

or

(c) unacceptable.

(2) Conduct of Discussions.

If discussions are conducted, the procurement officer shall exchange information with all offerors who submit proposals classified as acceptable or potentially acceptable. The content and extent of each exchange is a matter of the procurement officer's judgment, based on the particular facts of each acquisition. In conducting discussions, the procurement officer shall:

(a) Control all exchanges;

(b) Advise in writing every offeror of all deficiencies in its proposal, if any, that will result in rejection as non-responsive;

(c) Attempt in writing to resolve uncertainties concerning the cost or price, technical proposal, and other terms and conditions of the proposal, if any;

(d) Resolve in writing suspected mistakes, if any, by calling them to the offeror's attention.

(e) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal, but only to the extent such revisions are necessary to resolve any matter raised by the procurement officer during discussions under items (2)(b) through (2)(d) above.

(3) Limitations. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Ordinarily, discussions are conducted prior to final ranking. Discussions may not be conducted unless the solicitation alerts offerors to the possibility of such an exchange, including the possibility of limited proposal revisions for those proposals reasonably susceptible of being selected for award.

(4) Communications authorized by Section 11-35-1530(6) and items (1) through (3) above may be conducted only by procurement officers authorized by the appropriate chief procurement officer.

**J. Rejection of Individual Proposals.**

(1) Proposals need not be unconditionally accepted without alteration or correction, and to the extent otherwise allowed by law, the State's stated requirements may be clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

(a) the business that submitted the proposal is nonresponsible as determined under Section 11-35-1810;

(b) the proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect; or

(c) the proposed price is clearly unreasonable.

(2) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

**K. Negotiations.**

(1) Prior to initiating negotiations under Section 11-35-1530(8), the using agency must document its negotiation objectives.

(2) The responsible procurement officer must participate in, control, and document all negotiations.

**L. Delay in Posting Notice of Intent to Award or Award.**

Regulation 19-445.2090B shall apply to competitive sealed proposals.

**Instructions:** Document 4861, which has been submitted to the General Assembly but not approved, includes a section K of R. 19-445.2095 with different text. If the General Assembly approves Document 4861 after its approval, if any, of this proposed regulation, the text herein should appear in the Code of Regulations.

**19-445.2097. Rejection of Proposals.**

A. Unless there is a compelling reason to reject one or more proposals, award will be made to the highest ranked responsible offeror or otherwise as allowed by Section 11-35-1530. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective offerors of any resulting modification or cancellation.

**B. Cancellation of Solicitation Prior to Award.**

(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the request for proposals shall be cancelled. A request for proposals may be cancelled after opening, but prior the issuance of an award or notification of intent to award, whichever is earlier, when such action is consistent with subsection A above and the procurement officer determines in writing that:

(a) inadequate or ambiguous specifications were cited in the solicitation;

(b) specifications have been revised;

(c) the supplies, services, information technology, or construction being procured are no longer required;

(d) the solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;

(e) proposals received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the proposals were requested;

(f) all otherwise acceptable proposals received are at unreasonable prices;

(g) the proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

(h) for other reasons, cancellation is clearly in the best interest of the State.

(2) Determinations to cancel a request for proposals shall state the reasons therefor.

#### C. Extension of Bid Acceptance Period.

Should administrative difficulties be encountered after opening which may delay award beyond offeror's acceptance periods, the relevant offerors should be requested, before expiration of their offers, to extend the acceptance period (with consent of sureties, if any).

#### D. Return of Proposals

~~If a request for proposals is canceled, proposals shall be returned to the offerors.~~

### 19-445.2099. Competitive Negotiations.

#### A. General

(1) Competitive negotiations are governed by R. 19-445.2030B, -2040, -2042, -2045, -2050B, -2085C, -2090B, -2095C, -2095J, and -2098. Regulation 19-445-2097 (Rejection of Proposals) applies to competitive negotiations except that R. 19-445.2099(K)(1) is substituted for R. 19-445.2097A.

(2) Documentation required by this Regulation 19-445.2099 must be prepared at the time the process to be documented is conducted.

(3) For each competitive negotiation the head of the using agency or his designee must appoint in writing an individual to serve as the selection executive (SE). The SE must be an individual who has sufficient rank and professional experience to effectively carry out the functions of an SE. Subject to the authority and approval of the responsible procurement officer, the SE shall—

(a) Recommend an acquisition team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a well-developed solicitation, a comprehensive evaluation of offers, and effective negotiations;

(b) Approve the acquisition plan and the solicitation before solicitation release;

(c) Ensure consistency among and sufficiency of the solicitation requirements, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(d) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation;

(e) Consider the recommendations of subject matter experts, advisory boards or panels (if any); and

(f) Select the source or sources whose proposal is the best value to the State, as provided in R. 19-445.2099K.

(4) Consistent with Section 11-35-1535(A)(3), competitive negotiated acquisitions may be conducted only by the office of the appropriate chief procurement officer; accordingly, a chief procurement officer may not delegate to a using agency the authority to conduct a competitive negotiation.

#### B. Procedures for Competitive Negotiations.

The Division of Procurement Services may develop and issue procedures which shall be followed when using the competitive negotiations method of acquisition.

#### C. Definitions

Clarification means any communication in which the responsible procurement officer requests or accepts information that clarifies any information in a proposal. Clarification does not include the request or acceptance of any change to the terms of an offer.

Competitive range means the offeror or group of offerors selected for negotiation.



Deficiency means any term of an offer that does not conform to a material requirement of a solicitation. A material requirement is one that affects the price, quantity, quality, delivery, or other performance obligations of the contract.

Negotiation means any communication, oral or written, that invites or permits an offeror to change any texts or graphics in the terms of its offer in any way. Negotiation does not include communications involving (i) information that is necessary to understand an offer, but that does not change any text or graphics in the offer, (ii) information about the offeror, or (iii) any other information that will not bind the parties upon acceptance of an offer.

Offer means those portions of a proposal that constitute a written promise or set of promises to act or refrain from acting in a specified way, so made as to manifest a commitment to be bound by those promises upon acceptance by the State. Offer does not include mere descriptions of approaches, plans, intentions, opinions, predictions, or estimates; statements that describe the offeror's organization or capability; or any other statements that do not make a definite and firm commitment to act or refrain from acting in a specified way.

Proposal means the information submitted to the State in response to a request for proposals. The information in a proposal includes (i) the offer, (ii) information explaining the offer, (iii) information about the offeror, and (iv) any other information that is relevant to source selection decision making.

Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance. A "significant weakness" in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

#### D. Amending the solicitation

(1) When, either before or after receipt of proposals, the State changes its requirements or terms and conditions, the responsible procurement officer shall amend the solicitation.

(2) When, after the receipt of proposals, the State discovers that material inadequacies of the solicitation have contributed to technical or pricing deficiencies, the responsible procurement officer shall amend the solicitation to resolve the inadequacies, preferably prior to proceeding further with the procurement process.

(3) If a proposal of interest to the State involves a desirable departure from the stated requirements, the responsible procurement officer shall amend the solicitation, preferably prior to completion of proposal evaluation pursuant to F(1), provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see Regulation 19-445.2099I)).

(4) Amendments issued after the established time and date for receipt of proposals may not exceed the general scope of the request for proposals and must be issued to those offerors that have not been eliminated from the competition.

(5) If, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the responsible procurement officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

#### E. Evaluation Factors

(1) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

(2) Evaluation factors and significant subfactors must—

(a) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(b) Support meaningful comparison and discrimination between and among competing proposals.

(3) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance are within the broad discretion of the responsible procurement officer, subject to the following requirements:

(a) Price or cost to the State shall be evaluated unless the responsible procurement officer documents the reasons price or cost is not an appropriate evaluation factor for the acquisition and that decision is approved by the head of the using agency.

(b) The quality of the item to be acquired shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience.

(c) Past performance shall be evaluated unless the responsible procurement officer documents the reasons past performance is not an appropriate evaluation factor for the acquisition.

(4) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation. The rating method need not be disclosed in the solicitation.

(5) The request for proposals must state the relative importance of all factors to be considered in evaluating proposals but need not state a numerical weighting for each factor.

(6) If price is an evaluation factor, the solicitation must state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

#### F. Evaluation Process

(1) General. Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. All proposals shall be evaluated and, after evaluation, their relative qualities must be assessed solely on the factors and subfactors specified in the solicitation. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

(2) Evaluation methods. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings.

(3) Cost or price evaluation. The responsible procurement officer shall document the cost or price evaluation. Price reasonableness shall be determined independently of cost or price evaluation.

(4) Past performance evaluation.

(a) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered. This comparative assessment of past performance information is separate from the responsibility determination.

(b) The solicitation shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the stated requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. When evaluating an offeror's past performance, this information, as well as information obtained from any other sources, must be considered; however, the relevance of similar past performance information is a matter of business judgment.

(c) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

(5) Technical evaluation. The source selection records shall include—

(a) An assessment of each offeror's ability to accomplish the technical requirements; and

(b) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

#### G. Exchanges with offerors.

(1) Control. The responsible procurement officer shall control all exchanges after opening and prior to award.

(2) Fairness and Impartiality. The responsible procurement officer shall treat all offerors fairly and impartially when deciding whether and when to seek clarification or to negotiate. Similarly-situated offerors shall be given similar opportunities to clarify and, if in the competitive range, to negotiate.

(3) Clarifications. The responsible procurement officer may conduct clarifications at any time prior to the award decision.

(4) Competitive Range.

(a) After complying with Section 11-35-1535(G) (Evaluation), and before negotiating with anyone, the responsible procurement officer shall establish a competitive range comprised of the offerors that submitted the most promising offers.

(b) Ordinarily, the competitive range should not include more than three offerors. The responsible procurement officer may select only one offeror and may select more than three. The rationale for establishment of, and every modification to, the competitive range shall be determined in writing.

(c) Prior to conducting the minimum negotiations required by Section 11-35-1535(I)(3)(b)(i) and R. 19-445.2099H(2), otherwise promising offerors should not be excluded from the competitive range due solely to deficiencies that are reasonably susceptible of correction.

(d) After conducting the minimum negotiations required by 11-35-1535(I)(3)(b)(i) and R. 19-445.2099H(2), the responsible procurement officer may eliminate an offeror from the competitive range if the offeror is no longer considered to be among the most promising.

(e) Offerors excluded or otherwise eliminated from the competitive range may request a debriefing.

#### H. Negotiations with offerors

##### (1) Negotiations – General.

(a) The responsible procurement officer shall participate in and control all negotiations.

(b) The primary objective of negotiation is to maximize the State's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.

(c) The State may use any method of communication.

(d) Prior to any negotiation session, the using agency must document its prenegotiation objectives with regard to each offeror in the competitive range.

(e) The responsible procurement officer shall prepare a record of each negotiation session.

(f) Negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

(g) The responsible procurement officer may not relax or change any material requirement of the solicitation during negotiation except by amendment in accordance with R. 19-445.2099D.

(h) Negotiations may include pricing. The responsible procurement officer may state a price that the State is willing to pay for what has been offered and may tell an offeror its price standing.

(i) Subject to the following requirements, the scope and extent of negotiations are a matter of the responsible procurement officer's judgment:

(i) Section 11-35-30 (Obligation of Good Faith);

(ii) R. 19-445.2099G(2) (Fairness and Impartiality); and

(iii) R. 19-445.2099H(2) (Minimum Negotiations).

(j) The State may engage in more than one session with an offeror if necessary. Subject to R. 19-445.2099G(2), the conduct of multiple sessions with a particular offeror does not require the conduct of multiple sessions with other offerors.

(k) Throughout the competitive negotiation process, state personnel shall not disclose the content of any offeror's proposal to any other offeror.

(l) State personnel shall not promise that the State will select an offeror for award if it makes a particular change or set of changes to its offer.

##### (2) Negotiations – Minimum – Problem Identification

The State shall negotiate with each offeror in the competitive range. At a minimum, the State shall identify and seek the correction of any deficiency and the elimination of any other undesirable term in an offer.

##### (3) Negotiations – Enhancement.

(a) The responsible procurement officer may negotiate with offerors in the competitive range to seek changes in their offers that the State desires and to allow them to make other improvements.

(b) The responsible procurement officer may state specific terms that the State desires and seek improvements in already acceptable terms.

##### (4) Proposal Revisions.

(a) The responsible procurement officer may request or allow proposal revisions either (i) to clarify and document understandings reached during negotiations, or (ii) to provide offerors an opportunity to respond to an amendment.

(b) If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

(c) Upon the completion of all negotiations, the responsible procurement officer shall request that offerors still in the competitive range submit final offers not later than a specified common cutoff date and time that allows a reasonable opportunity for submission. When submitting final offers, an offeror may revise any aspect of its offer. The responsible procurement officer shall notify offerors that failure to submit a final offer by the common cutoff date and time will result in the consideration of their last prior offer. Requests for final offers shall advise offerors that final offers shall be in writing and that the government intends to make award without obtaining further revisions.

I. Limitations on exchanges. State personnel involved in the acquisition shall not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals the names of individuals providing reference information about an offeror's past performance; or

(4) Knowingly furnishes source selection information in violation of Regulation 19-445.2010.

J. Tradeoff Process

(1) A tradeoff process is appropriate when it may be in the interest of the State to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

(2) This process permits tradeoffs among cost or price and non-cost factors and allows the State to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file.

K. Award

(1) Unless there is a compelling reason to reject proposals, award must be made to the responsible offeror whose final proposal meets, in all material respects, the requirements announced in the solicitation, as amended, and is determined in writing to provide the best value to the State, taking into consideration the evaluation factors set forth in the request for proposals and, if price is an evaluation factor, any tradeoffs among price and non-price factors. Award must be based on a comparative assessment of final proposals from offerors within the competitive range against all source selection criteria in the solicitation.

(2) The contract file must document the basis on which the award is made, and the documentation must explain and justify the rationale for any business judgments and tradeoffs made or relied on in the award determination, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

(3) The contract file must document who performed the functions required by sections F, J, and K of R. 19-445.2099 and which functions they performed.

19-445.2100. Small Purchases and Other Simplified Purchasing Procedures.

A. Authority.

(1) An agency may make small ~~Small purchases (under \$50,000) shall be made as provided~~ not exceeding the limits prescribed in Section 11-35-1550 in accordance with the procedures in that section and herein. ~~For small purchases over ten thousand dollars, bidders must be provided reasonable time to prepare their bids, no less than seven (7) days after notice is provided as required by Section 11-35-1550(2)(c), unless a shorter time is deemed necessary for a particular procurement as determined in writing by the head of the purchasing agency or his designee. In accordance with Section 11-35-1550(2)(c), an agency may:~~

(2) Any purchase of supplies, services, or information technology made pursuant to Section 11-35-1550 must be within the agency's certification.

(3) These simplified acquisition procedures shall not be used for items available under mandatory state term contracts (see R. 19-445-2020B(1)).

(4) Contracts solely for the procurement of commercially available off-the-shelf products pursuant to section 11-35-1550 are not subject to laws identified in Section 11-35-2040.

(5) When required, adequate public notice must comply with R. 19-445.2000F.

(6) Section 11-35-4210(1)(d) makes the protest process inapplicable to contracts with an actual or potential value of up to \$50,000. Because the protest process applies to all small purchases in excess of \$50,000, notice of an award must be communicated to all bidders on the same date award is made and must be documented in the procurement file. Any method of communication may be used.

B. Purchases pursuant to Section 11-35-1550(2)(b) (Three Written Quotes).

(1) If an agency does not receive responsive quotes from at least three responsible bidders, adequate public notice must be given and documented with the purchase requisition. So-called "no bids" are not bona fide and do not count as one of the three.

(2) Requests for quotes must be distributed equitably among qualified suppliers, unless adequate public notice is given in South Carolina Business Opportunities.

C. Purchases pursuant to Section 11-35-1550(2)(c) (Advertised Small Purchase) may be made by giving adequate public notice in South Carolina Business Opportunities and:

(1) issuing a written solicitation for ~~selekt~~ written quotes, as described ~~further specified~~ in Section 11-35-1550(2)(c);

(2) ~~soliciting selekt~~ bids in accordance with Section 11-35-1520, Competitive Sealed Bidding, Section 11-35-1525, Competitive Fixed Price Bidding, or Section 11-35-1528, Competitive Best Value Bidding; or

(3) ~~soliciting selekt~~ proposals in accordance with Section 11-35-1530, Competitive Sealed Proposals.

D. When conducting a small purchase over twenty-five thousand dollars for which adequate public notice is required, potential offerors must be provided reasonable time to prepare their bids, no less than seven (7) days after such notice is provided, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the head of the purchasing agency, the appropriate chief procurement officer, or the designee of either.

EB. Establishment of Blanket Purchase Agreements.

(1) General. A blanket purchase agreement is a simplified method of filling repetitive needs for small quantities of miscellaneous supplies, services, or information technology by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

(2) Alternate Sources. To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive sources shall be given an equal opportunity to furnish supplies, services, or information technology under such agreements.

(3) Terms and Conditions. Blanket purchase agreements shall contain the following provisions:

(a) Description of agreement. A statement that the supplier shall furnish supplies, services, or information technology, described therein in general terms, if and when requested by the Procurement Officer, or his authorized representative, during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the supplier is in a position to furnish.

(b) Extent of obligation. A statement that the State is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement.

(c) Notice of individuals authorized to place calls and dollar limitations. A provision that a list of names of individuals authorized to place calls under the agreement, identified by organizational component, and the dollar limitation per call for each individual shall be furnished to the supplier by the Procurement Officer.

(d) Delivery tickets. A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

(1) name of supplier;

(2) blanket purchase agreement number;



- (3) date of call;
- (4) call number;
- (5) itemized list of supplies, services, or information technology furnished;
- (6) quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and
- (7) date of delivery or shipment.

(e) Invoices one of the following statements:

(1) A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets; or

(2) An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets;

(3) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated provided that a consolidated payment will be made for each specified period; and the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later. This procedure should not be used if the accumulation of the individual invoices materially increases the administrative costs of this purchase method.

#### CF. Competition Under Blanket Purchase Agreement.

Calls against blanket purchase agreements shall be placed after prices are obtained. When concurrent agreements for similar items are in effect, calls shall be equitably distributed. In those instances where there is an insufficient number of BPAs for any given class of supplies, services, or information technology to assure adequate competition, the individual placing the order shall solicit quotations from other sources.

#### DG. Calls Against Blanket Purchase Agreement.

Calls against blanket purchase agreements generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed. Documentation of calls shall be limited to essential information. Forms may be developed for this purpose locally and be compatible with the Comptroller General's Office STARS system.

#### EH. Receipt and Acceptance of Supplies or Services.

Acceptance of supplies, services, or information technology shall be indicated by signature and date on the appropriate form by the authorized State representative after verification and notation of any exceptions.

#### FI. Review Procedures.

The governmental body shall review blanket purchase agreement files at least semiannually to assure that authorized procedures are being followed. Blanket purchase agreements shall be issued for a period of no longer than 12 months.

### 19-445.2105. Sole Source Procurements.

#### A. Application.

The provisions of this Regulation shall apply to all sole source procurements unless emergency conditions exist as defined in Regulation 19-445.2110.

#### B. Exceptions.

Sole source procurement is not permissible unless there is only a single supplier. The following are examples of circumstances which could necessitate sole source procurement:

- (1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- (2) where a sole supplier's item is needed for trial use or testing;
- (3) [Repealed]
- (4) [Repealed]



(5) where the item is one of a kind; and

(6) [Repealed]

C. Written Determination.

(1) The written determination to conduct as to whether a procurement shall be made as a sole source shall be made by either the Chief Procurement Officer, the head of a purchasing agency, or designee of either office above the level of the procurement officer. Any delegation of authority by either the Chief Procurement Officer or the head of a purchasing agency with respect to sole source determinations shall be submitted in writing to the Materials Management Officer. Such determination and the basis therefor shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness.

(2) The written determination must include a purchase description that states the using agency's actual needs, which shall not be unduly restrictive. In cases of reasonable doubt, competition should be solicited. Any request by a governmental body that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision and must be accompanied by market research that supports the decision. The determination must be authorized prior to contract execution.

D. Notice.

(1) Compliance with the notice requirements in Section 11-35-1560(A) must be documented in the procurement file.

(2) The public notice required by Section 11-35-1560(A) must include the written determination required by Section C(2) above or instructions how to obtain the written determination immediately upon request.

E. Other Applicable Provisions.

Sole source procurements must comply with all applicable statutes and regulations, including without limitation, Sections 11-35-30 (Obligation of good faith), -210 (Determinations), -410 (Public access to procurement information), -1810 (Responsibility of bidders and offerors), -1830 (Cost or pricing data), -2010 (Types of contracts), -2030 (Multiterm contracts), -1610 (Change order or contract modification), -2440 (Records of procurement actions), -2730 (Assuring competition), and -4230 (Authority to resolve contract and breach of contract controversies).

19-445.2110. Emergency Procurements.

A. Application.

The provisions of this Regulation apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

B. Definition.

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by either the Chief Procurement Officer or the head of a purchasing agency or a designee of either office. The existence of such conditions must create an immediate and serious need for supplies, services, information technology, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

(1) the functioning of State government;

(2) the preservation or protection of property; or

(3) the health or safety of any person.

C. Limitations.

Emergency procurement shall be limited to those supplies, services, information technology, or construction items necessary to meet the emergency.

D. Conditions.

Any governmental body may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval

by either the head of a purchasing agency or his designee or the Chief Procurement Officer shall be obtained prior to the procurement.

E. Selection of Method of Procurement.

The procedure used shall be selected to assure that the required supplies, services, information technology, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

F. Notice.

Compliance with the notice requirements in Section 11-35-1570(B) must be documented in the procurement file.

G. Written Determination.

The Chief Procurement Officer or the head of the purchasing agency or a designee of either office shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision.

19-445.2115. Information Technology Procurements.

A. ~~Reserved. Authority and Purpose.~~

~~Every governmental body, whether using State appropriations or other funds, shall rent, purchase, or lease any information technology, or software, or contract for consulting or other services in the field of information technology only in accordance with these Regulations.~~

B. ~~Reserved. Organization.~~

~~Every governmental body shall develop in coordination with the designated board officer master plan for Information Technology procurements as defined in Section 11-35-310 of the Procurement Code. Subject to the approval of the master plan by the designated board office, acquisition of Information Technology by governmental bodies shall be through the Information Technology Management Office.~~

C. Software Licensing

Pursuant to Section 11-35-510 and 11-35-1580, the Information Technology Management Officer may execute an agreement with a business on behalf of, and which binds all, governmental bodies in order to establish the terms and conditions upon which computer software may be licensed, directly or indirectly, from that business by a governmental body. Such an agreement may provide for the voluntary participation of any other South Carolina public procurement unit. Such agreements do not excuse any governmental body from complying with any applicable requirements of the Procurement Code and these Regulations, including the requirements of Section 11-35-1510.

19-445.2120. Cost or Pricing Data.

A. Definitions

(1) Adequate Price Competition. Price competition exists if competitive sealed proposals are solicited, at least two responsive and responsible offerors independently compete for a contract, and price is a substantial factor in the evaluation. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines in writing that such competition is not adequate.

(2) Commercial product has the meaning stated in Section 11-35-1410(1).

(32) Established catalog price has the meaning stated in Section 11-35-1410.

(43) Established Market Price means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources which are independent of the manufacturer or supplier and may be an indication of the reasonableness of price.

(54) Prices Set by Law or Regulation. The price of a supply or service is set by law or regulation if some governmental body establishes the price that the offeror or contractor may charge the State and other customers.

B. Thresholds

(1) Section 11-35-1830(1)(a) applies where the total contract price exceeds five hundred thousand dollars.

(2) Section 11-35-1830(1)(b) applies where the pricing of any change order, contract modification, or termination settlement exceeds five hundred thousand dollars, unless the procurement officer determines in writing that such information is necessary to determine that the pricing is reasonable. Price adjustment amounts shall consider both increases and decreases (e.g., a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000.). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(3) Ordinarily, cost and pricing data should not be required for the acquisition of any item that meets the definition of commercial product, including any modification that does not change the item from a commercial product to a non-commercial product. The contractor may be required to submit cost or pricing data for commercial products or COTS only if the purchase or modification exceeds the thresholds established in this section and the procurement officer determines in writing that no other basis exists to establish price reasonableness.

#### C. Conditions of Waiver

The requirements of Section 11-35-1830 may be waived if the head of the using agency determines in writing that the price can be determined to be fair and reasonable without submission of cost or pricing data.

#### D. Refusal to Submit Data

A refusal by the offeror to supply the requested information may be grounds to disqualify the offeror or to defer award pending further review and analysis.

### 19-445.2125. Responsibility of Bidders and Offerors.

#### A. State Standards of Responsibility.

Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has:

(1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;

(2) a satisfactory record of performance;

(3) a satisfactory record of integrity;

(4) qualified legally to contract with the State; and

(5) supplied all necessary information in connection with the inquiry concerning responsibility.

#### B. Obtaining Information; Duty of Contractor to Supply Information.

At any time prior to award, the prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor non responsible if such failure is unreasonable. In determining responsibility, the procurement officer may obtain and rely on any sources of information, including but not limited to the prospective contractor; knowledge of personnel within the using or purchasing agency; commercial sources of supplier information; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; government agencies; and business and trade associations.

#### C. Demonstration of Responsibility.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(1) evidence that such contractor possesses such necessary items;

(2) acceptable plans to subcontract for such necessary items; or

(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

#### D. Duty Concerning Responsibility.

(1) Before awarding a contract or issuing a notification of intent to award, whichever is earlier, the procurement officer must be satisfied that the prospective contractor is responsible. The determination is not limited to circumstances existing at the time of opening.

(2) Consistent with Section 11-35-1529(3), the procurement officer must determine responsibility of bidders in competitive on-line bidding before bidding begins.

E. Written Determination of Nonresponsibility.

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.

F. Special Standards of Responsibility

When it is necessary for a particular acquisition or class of acquisitions, the procurement officer may develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors. A valid special standard of responsibility must be specific, objective and mandatory.

G. Subcontractor responsibility.

(1) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. Determinations of prospective subcontractor responsibility may affect the procurement officer's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

(2) When it is in the state's interest to do so, the procurement officer may directly determine a prospective subcontractor's responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the procurement officer to determine subcontractor responsibility.

19-445.2127. Organizational Conflicts of Interest.

A.General.

(1) "Organizational conflict of interest" occurs when, because of other activities or relationships with the State or with other businesses:

- (a) a business is unable or potentially unable to render impartial assistance or advice to the State, or
- (b) the business' objectivity in performing the contract work is or might be otherwise impaired, or
- (c) a business has an unfair competitive advantage.

(2) This regulation applies to acquisitions of supplies, services and information technology, except for acquisitions made pursuant to Section 11-35-1550. Unless the procurement uses a project delivery method identified in Section 11-35-3005(1)(e), 1(f), or (2)(a), this regulation does not apply to acquisitions under Article 9 (Construction, Architect-Engineer, Construction Management, and Land Surveying Services).

(3) The general rules in sections B (Providing systems engineering and technical direction), C (Preparing specifications or work statements), and D (Providing evaluation of offers) below prescribe limitations on contracting as the means of avoiding organizational conflicts of interest that might otherwise exist in the stated situations. Conflicts may arise in situations not expressly covered in sections B, C, and D. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are

- (a) Preventing the existence of conflicting roles that might bias a contractor's judgment; and
- (b) Preventing unfair competitive advantage. Without limitation, an unfair competitive advantage exists where a business competing for award of a State contract possesses (i) proprietary information that was obtained from the State without authorization; or (ii) source selection information (R. 19-445.2010C)

that is relevant to the contract but is not available to all competitors, and such information would assist that business in obtaining the contract.

(4) The terms “contractor” and “subcontractor” are defined by Section 11-35-310.

B. Providing systems engineering and technical direction. (1) A business shall not be awarded a contract to supply a system or any of its major components, or be a subcontractor or consultant, if that business, as a contractor, provided or provides a combination of substantially all of the following activities:

(a) determining specifications or developing work statements,

(b) determining parameters,

(c) identifying and resolving interface problems,

(d) developing test requirements,

(e) evaluating test data,

(f) supervising design,

(g) directing other contractors’ operations, and

(h) resolving technical controversies.

(2) This section B does not prohibit a contractor providing systems engineering and technical direction, from developing or producing a system if the entire effort is conducted under a single contract.

C. Preparing specifications or work statements.

(1) If a contractor prepares and furnishes specifications for a specific acquisition of tangible supplies or information resources, or their components, that contractor shall not be allowed to furnish these items, either as a contractor or as a subcontractor at any tier, for a reasonable period of time including, at least, the duration of the initial contract for purchase of the items.

(2) If a contractor prepares, or assists in preparing, a work statement to be used in a specific acquisition of a system or services—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply the system, major components of the system, or the services, either as a contractor or as a subcontractor at any tier, unless (a) the acquisition is a sole source under R. 19-445.2105; (b) it has participated in the development and design work; or (c) more than one contractor has been involved in preparing the work statement.

D. Providing evaluation of offers. If a contractor evaluates or supports the evaluation of a bid or proposal for a contract with a governmental body, that contractor and its affiliates are barred from performing under that contract as either a contractor or as a subcontractor at any tier.

E. Procurement Officer Responsibilities.

(1) The responsible procurement officer shall (a) analyze planned acquisitions in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and (b) review plans to avoid, neutralize, or mitigate significant potential conflicts before contract award.

(2) The responsible procurement officer shall determine whether the apparent successful offeror has an organizational conflict of interest. The responsible procurement officer shall award the contract to the apparent successful offeror unless (i) a conflict of interest is determined to exist that cannot be avoided or mitigated, or (ii) the conflict is waived as provided in section F. Before determining to withhold award based on conflict of interest considerations, the procurement officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond.

F. Waiver. With respect to the award of an individual contract, the using agency may waive an organizational conflict of interest by determining that the application of these rules in a particular situation would not be in the State’s interest. A determination to waive a conflict of interest must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or her designee above the level of the agency’s senior procurement official. If a waiver involves an acquisition with a value that exceeds either the limits of the governmental body’s authority under Section 11-35-1210(1) or one million dollars, the appropriate Chief Procurement Officer must concur in the waiver and the written determination must be published with the notice of intent to award. Any report required by R. 19-445.2020A(2) must include every waiver addressing a procurement during the audit period.

G. The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies to identify organizational conflicts of interest and techniques to avoid or mitigate them.

19-445.2135. Conditions for Use of Multi-term Contracts.

A. General.

A multi-term contract is a contract for the acquisition of supplies, services, or information technology for more than one year. A contract is not a multi-term contract if no single term exceeds one year and each term beyond the first requires the governmental body to exercise an option to extend or renew. A multi-term contract is appropriate when it is in the best interest of the State to obtain uninterrupted services for a period in excess of one year, where the performance of such services involves high start up costs, or when a changeover of service contracts involves high phase in/phase out costs during a transition period. The multi-term method of contracting is also appropriate when special production of definite quantities of supplies for more than one year is necessary to best meet state needs but funds are available only for the initial fiscal period. Special production refers to production for contract performance when it requires alteration in the contractor's facilities or operations involving high start up costs.

B. Objective.

The objective of the multi-term contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during changeover of service contracts.

C. Exceptions.

This Regulation 19-445.2135 applies only to contracts for supplies, services, or information technology and does not apply to contracts for construction.

D. Conditions for Use.

(1) A multi-term contract may be used if , prior to issuance of the solicitation, the Procurement Officer determines in writing that:

(a) Special production of definite quantities or the furnishing of long term services are required to meet state needs; or

(b) a multi-term contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(2) The following factors are among those relevant to such a determination:

(a) firms which are not willing or able to compete because of high start up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

(b) lower production cost because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;

(c) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality;

(d) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

(3) The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision.

E. Solicitation.

The solicitation shall state:

(1) the estimated amount of supplies or services required for the proposed contract period;

(2) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

(3) that the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the state's rights or the contractor's rights under any termination clause in the contract;



- (4) that the procurement officer of the governmental body must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;
- (5) whether bidders or offerors may submit prices for:
- (a) the first fiscal period only;
  - (b) the entire time of performance only; or
  - (c) both the first fiscal period and the entire time of performance;
- (6) that a multi-term contract may be awarded and how award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared; and,
- (7) that, in the event of cancellation as provided in (E) (3) of this subsection, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

F. Award.

Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal period that award on the basis of prices for the first period does not permit the successful bidder or offerer to “buy in”, that is give such bidder or offeror an undue competitive advantage in subsequent procurements.

G. Maximum Contract Periods

Every ~~Prior to opening~~, a contract with a total potential duration in excess of five years must be approved as required by Section 11-35-2030(4) or Section 11-35-2030(5). No solicitation shall be issued for a contract with a total potential duration in excess of five years, nor shall any contract with a total potential duration in excess of five years be awarded pursuant to Section 11-35-1560, until such approval is granted.

19-445.2141. Commercial Products.

A. Definitions.

(1) Commercial product has the meaning stated in Section 11-35-1410, and does not include printing or insurance.

(2) Commercially available off-the-shelf product (“COTS”) has the meaning stated in Section 11-35-1410, and does not include printing or insurance.

B. General.

(1) Agencies shall conduct market research to determine whether commercial products or COTS are available that could meet agency requirements, and should endeavor to acquire commercial products or COTS when they are available to meet agency needs (see R. 19-445.2140D (Preference for commercially available products)).

(2) Consistent with Section 11-35-1535(A)(2), the competitive negotiations source selection method may not be used to acquire only commercially available off-the-shelf products.

C. Price reasonableness.

(1) An advantage of COTS is that a competitive market, evidenced by substantial commercial sales, helps to determine price reasonableness. Substantial sales of a COTS product may establish catalog prices (see Section 11-35-1410) and market prices. Market prices are current prices that are established in the usual and ordinary course of trade between buyers and sellers (see R. 19-445.2120A(3)). A characteristic of both catalog prices and market prices is that they can be substantiated from sources independent of the offeror—for example, through market research.

(2) “Items customarily sold in bulk” means products that are loaded and carried in bulk without mark or count. COTS does not include bulk materials, like fuel and grain, because the prices for those items fluctuate, making it difficult or impossible to rely on short-term pricing to establish price reasonableness for purchase contracts that may be for a longer term.

D. Purchase description or specification.

The agency’s purchase description must contain sufficient detail for potential offerors of commercial products or COTS to know which products may be suitable. Generally, an agency’s specification for COTS should describe the type of product to be acquired and explain how the agency intends to use the product in terms of function to be performed, performance requirement or physical characteristics. Describing the agency’s needs in these terms allows offerors to propose products that will best meet the State’s needs.

E. Simplified purchasing procedures for COTS.

(1) Section 11-35-1550(2)(b) authorizes the use of simplified procedures for the acquisition of supplies and information resources in amounts up to \$100,000, if the responsible procurement officer reasonably expects, based on the nature of the supplies or information resources sought, and on market research, that offers will include only COTS. The purpose of these simplified procedures is to vest procurement officers with additional procedural discretion and flexibility, so that COTS acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the State and industry (see R. 19-445.2100).

(2) The procurement officer should be aware of customary commercial terms and conditions when pricing COTS. COTS prices are affected by factors that include, but are not limited to, speed of delivery, length and extent of warranty, limitations of seller's liability, quantities ordered, length of the performance period, and specific performance requirements. The procurement officer should review the using agency's standard contract terms and conditions, along with commercial terms appropriate for the acquisition of the particular item. The procurement officer should consider avoiding terms inconsistent with commercial practice, unless those terms are required by law (see R. 19-445.2143) or are essential to the using agency's requirements.

(3) Section 11-35-2040 provides that COTS purchases made using any of the simplified procedures of Section 11-35-1550 are exempt from a number of statutory provisions that vendors have complained are overly burdensome. The procurement officer should consider Section 11-35-2040 and R. 19-445.2143 when preparing the solicitation or written request for quotes.

(4) Regulation 19-445.2120B(3) prohibits requiring cost or pricing data when acquiring a commercial product, including COTS, unless the purchase or modification exceeds the thresholds established in that section and the procurement officer determines in writing that no other basis exists to establish price reasonableness.

F. The appropriate Chief Procurement Officer may develop and issue guidance, including solicitation forms, which may be used by agencies acquiring COTS using small purchase procedures.

19-445.2143. Contract clauses and administration.

A. Contracts formed pursuant to the Consolidated Procurement Code are deemed to incorporate all applicable provisions thereof and the ensuing regulations.

B. Prohibited Terms. Unless otherwise specifically provided by or authorized by law, if a contract contains any of the following terms, the term shall be void, and the contract is otherwise enforceable as if it did not contain such term or condition:

(1) Terms (a) subjecting the State of South Carolina or its agencies to the jurisdiction of the courts of other states; or (b) requiring the State of South Carolina or its agencies to bring or defend a legal claim in a venue outside this State. (Sections 11-35-2050 and -4230)

(2) Terms limiting the time in which the State of South Carolina or its agencies may bring a legal claim under the contract to a period shorter than that provided in South Carolina law. (Sections 11-35-4230(2) and 15-3-140)

(3) Terms imposing a payment obligation, including a rate of interest for late payments, inconsistent with the terms of Section 11-35-45.

(4) Terms that require the State to defend, indemnify, or hold harmless another person. (Section 11-35-2050)

(5) Terms requiring that the contract be governed or interpreted by other than South Carolina law. (Section 11-35-2050)

C. A material change is a change order or contract modification that is beyond the general scope of the original contract, such that the subject of the modification should be competitively procured absent a valid sole-source justification. Material changes are inconsistent with the underlying purposes and policies of this code. The appropriate Chief Procurement Officer may develop and issue guidance and procedures for evaluating whether a change order or modification is material.

19-445.2145. Construction, Architect Engineer, Construction Management, and Land Surveying Services.  
A. through B. (No Changes)

C. Bonds and Security.

(1) Bid Security. Bid Security required by Section 11-35-3030 shall be a certified cashier's check or a bond, in a form to be specified in the Manual for Planning and Execution of State Permanent Improvements - Part II, provided by a surety company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. ~~In the case of a construction contract under \$100,000, the agency may, upon written justification and with the approval of the Office of the State Engineer, allow the use of a "B+" rated bond when bid security is required.~~ Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney in fact to bind the surety.

(2) Contract Performance and Payment Bonds. Unless waived pursuant to Section 11-35-3030(2)(iii), the contractor shall provide a certified cashier's check in the full amount of the Performance and Payment Bonds or may provide, and pay for the cost of, Performance and Payment Bonds in a form to be specified in the Manual for Planning and Execution of State Permanent Improvements-Part II. Each bond for construction exceeding \$50,000 shall be issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. Where the agency requires a payment bond for construction of \$50,000 or less, the bond must be issued by a surety meeting the requirements of Section 29-6-270. ~~In the case of construction under \$50,000, the agency may, upon written justification and with the approval of the Office of the State Engineer, allow the use of a "B+" rated bond when bid security is required.~~ Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney in fact to bind the surety.

D. through G. (no changes)

H. With regard to Section 11-35-3310, the State Engineer's Office will establish working procedures for indefinite quantity delivery construction contracts for professional services, and shall include them in the Manual for Planning and Execution of State Permanent Improvements-Part II. With regard to Section 11-35-3320, the State Engineer's Office will establish working procedures for task order contracts for construction services and shall include them in the Manual for Planning and Execution of State Permanent Improvements-Part II.

I. through N. (no changes)

19-445.2152. Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.

A. Justification. A governmental body proposing to enter into an agreement other than an outright purchase is responsible for the justification of such action. Lease, lease/purchase, installment purchase, or rental agreements are subject to the procedures of the Procurement Code and these Regulations.

B. Procedures. Upon written justification by the procurement officer of the governmental body of such alternate method, the following procedures will be followed:

(1) The State of South Carolina Standard Equipment Agreement will be used in all cases unless modifications are approved by the ~~designated board officer~~ Director of the Division of Procurement Services or his designee. A purchasing agency may enter into an agreement for the rental of equipment without using the Standard Equipment Agreement when the agreement has a total potential value of fifteen thousand dollars or less or the agreement does not exceed ninety days in duration.

(2) Installment purchases will require the governmental body to submit both a justification and purchase requisition to the appropriate chief procurement officer or his designee for processing.

(3) All lease/purchase and installment sales contracts must contain an explicitly stated rate of interest to be incurred by the State under the contract.

19-445.3000. School District Procurement Codes; Model.

A. Application.

Under Section 11-35-70, a school district is exempt from the South Carolina Consolidated Procurement Code (except for a procurement audit) if the district has its own procurement code which is, in the written opinion of the ~~Office of General Services of the State Budget and Control Board~~ Division of Procurement Services of the State Fiscal Accountability Authority, substantially similar to the provisions of the Consolidated Procurement Code and regulations in effect at the time the opinion is issued.

B. Delegation.

The authority and responsibilities under Section 11-35-70 are hereby delegated to the Materials Management Officer.

C. Substantially Similar.

To qualify for approval, a district code should largely mirror, but need not be identical to, the Consolidated Procurement Code. Because a district code needs only to be substantially similar to the consolidated procurement code and regulations, a district code may accommodate the differing context of school districts (e.g., differences between state government and local school district operations, including size, purchasing staff resources, volume and type of procurements, and structure of its governing body and executive hierarchy) as long as it preserves the sound procurement policies and practices underlying the rules found in the consolidated procurement code and regulations.

D. Definitions.

Covered District means a school district subject to the requirements of Section 11-35-70. Model code means a model school district procurement code and any subsequent modifications to the model code, including instructions regarding how each district may customize the model code to an individual district's organizational structure.

E. Guidelines; Model Code.

By requiring a written opinion, Section 11-35-70 provides for an exercise of judgment. The best interest of the state is served by exercising this judgment in a consistent manner. Accordingly, the Materials Management Office may publish guidance regarding its exercise of this judgment, including publication of a model code. In developing a model code, the Materials Management Officer should consult with all covered districts and the State Department of Education. Any model should be designed to serve and comply with the purposes and policies enumerated in Section 11-35-20 in the specific context of local school district operations, with due regard for minimizing administrative costs of compliance with the model code. Prior to publishing a model code, the Materials Management Officer must determine in writing that the model code is substantially similar to the provisions of the South Carolina Consolidated Procurement Code and these procurement regulations. Any school district may adopt the model code.

F. Duration of Written Opinion.

A written opinion issued pursuant to Section 11-35-70 remains valid for a covered district's procurement code until the covered district seeks and receives a written opinion for modifications to its procurement code.

G. Effect of Adoption.

A procurement code adopted by a school district in accordance with all applicable law shall have the full force and effect of law.

Act No. 41 (excerpt from page 70):

**Publication of interim regulations**

SECTION 76. No later than the first Monday in September after this act takes effect, the State Fiscal Accountability Authority shall publish interim regulations it will follow to implement changes to Chapter 35, Title 11 of the 1976 Code, as contained in this act. These interim regulations must be used in implementing this act until such time as the final rules and regulations are adopted in accordance with this section and Chapter 23, Title 1. No later than the first Monday in November after this act takes effect, the State Fiscal Accountability Authority shall publish a draft of the proposed final regulations it will follow to implement changes; provided, however, the interim regulations are not subject to the provisions of Chapter 23, Title 1.

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AGENCY: S.C. Governor's School for Science and Mathematics (GSSM)

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SUBJECT: Approval of Personnel Settlement Agreement

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Dr. Jeff Janovetz was terminated from the S.C. Governor's School for Science and Mathematics (GSSM) in February 2019 and filed an appeal through the State Grievance Procedure Act. He alleges, among other things, that GSSM violated its policies and procedures, breached his contract, and retaliated against him for exercising free speech and other constitutional rights. In addition, he has threatened litigation upon the exhaustion of this administrative remedy. GSSM disputes these allegations. It remains GSSM's position that Dr. Janovetz was an at will employee, terminated for just cause in accordance with SCDE policy and based on legitimate, non-discriminatory reasons and that the decision was unrelated to the content of Dr. Janovetz's speech or his opinions and ideas.

GSSM requests approval of the personnel settlement which contemplates Dr. Jeff Janovetz being paid a non-wage based lump sum payment for a total of \$85,000. Payment would be made through the GSSM general fund and its insurance carrier, the South Carolina Insurance Reserve Fund ("IRF"). Specifically, \$60,000 of the payment will be distributed from the GSSM general fund and an amount of \$25,000 will be paid by the IRF.

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AUTHORITY ACTION REQUESTED:

As requested by the S.C. Governor's School for Science and Mathematics, approve a personnel settlement of \$85,000 between Dr. Jeff Janovetz and the S.C. Governor's School for Science and Mathematics.

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ATTACHMENTS:

Agenda item worksheet; Paul 8/9/19 letter; Regulation 19-718.11



## STATE FISCAL ACCOUNTABILITY AUTHORITY AGENDA ITEM WORKSHEET

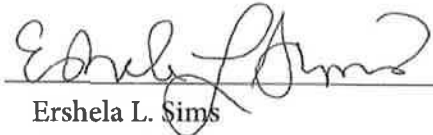
Meeting Scheduled for: August 13, 2019

Regular Agenda

1. Submitted By:

(a) Agency: GSSM

(b) Authorized Official Signature:

  
Ershela L. Sims

2. Subject: Seeking Approval of Personnel Settlement Agreement

3. Summary Background Information:

Dr. Jeff Janovetz was terminated from GSSM in February 2019 and filed an appeal through the State Greivance Procedure Act. He alleges, among other things, that GSSM violated its policies and procedures, breached his contract, and retaliated against him for exercising free speech and other constitutional rights. In addition, he has threatened litigation upon the exhaustion of this administrative remedy. GSSM disputes these allegations. It remains GSSM's position that Dr. Janovetz was an at will employee, terminated for just cause in accordance with SCDE policy and based on legitimate, non-discriminatory reasons and that the decision was unrelated to the content of Dr. Janovetz's speech or his opinions and ideas.

4. What is Authority asked to do?

Approval personnel settlement which contemplates a former employee, Dr. Jeff Janovetz, being paid a non-wage based lump sum payment for a total of \$85,000. Payment would be made through the GSSM general fund and its insurance carrier, the South Carolina Insurance Reserve Fund ("IRF"). Specifically, \$60,000 of the payment will be distributed from the GSSM general fund, and an amount of \$25,000 will be paid by the IRF.

5. What is recommendation of the Agency involved?

It is GSSM's recommendation that the settlement be approved.

6. Recommendation of other Division/Agency (as required)

(a) Authorized Signature:   
(b) Division/Agency Name: SC Department of Education

7. List of Supporting Documents:



Henry McMaster, Governor  
Marcia S. Adams, Executive Director

DIVISION of STATE HUMAN RESOURCES  
Karen Luchka Wingo, Director  
8301 Parklane Road, Suite A220  
Columbia, SC 29223  
803.896.5300  
803.896.5050 Fax

August 9, 2019

Grant Gillespie, Executive Director  
Wade Hampton Building, Suite 600  
Columbia, SC 29201

Via email only @ GGillespie@sfaa.sc.gov

Re: Personnel Settlement - Governor's School for Science & Mathematics / Jeff Janovetz

Dear Mr. Gillespie,

On August 6, 2019, the Department of Administration (Admin) was notified that the above matter may be placed on the agenda for the State Fiscal Accountability Authority's (SFAA) August 13, 2019 meeting. On August 8th, Admin received confirmation that the matter would be on the agenda and on August 9, 2019, received the Governor's School for Science and Mathematics' (GSSM) Letter of Justification as it relates to the personnel settlement agreement reached between GSSM and Dr. Jeff Janovetz. Admin's Division of State Human Resources (DSHR) has reviewed GSSM's Letter of Justification and notes that GSSM sets out their reasons for settling this matter and provides justification for the amount of the settlement. As such, DSHR recommends that SFAA consider GSSM's position that the economic and practical advantages of concluding this matter now in light of the legal costs associated with a hearing before the panel and pending and anticipated future litigation is the most cost-effective option.

Sincerely,

Kevin Paul  
Acting Director

C: Delbert Singleton (via email only)  
Jasmine Rogers Drain (via email only)



## **19-718.11. APPROVAL OF PERSONNEL SETTLEMENTS.**

It is the policy of the State Fiscal Accountability Authority that personnel settlement proposals be presented to the State Fiscal Accountability Authority for approval as outlined in the following:

A. In all situations where a personnel settlement has not been negotiated or approved by the Office of the Attorney General under a plan approved by the Office of the Attorney General;

B. In all human resources-related matters, after review and recommendation by the State Human Resources Director, excluding settlements which have been negotiated and approved by the Workers' Compensation Commission, Department of Employment and Workforce, Equal Employment Opportunity Commission, or South Carolina Human Affairs Commission; and

C. In all other situations where specific approval of the State Fiscal Accountability Authority would be necessary to disburse funds mentioned under the settlement proposal. Exception: Personnel Settlements containing lump sum amounts where payment would be supplied by the Insurance Reserve Fund or an agency's Foundation Fund.

1. All personnel settlement proposals shall contain such information as the State Fiscal Accountability Authority or its designee specifies.

2. The State Human Resources Director may review and approve any personnel settlement of \$10,000 or less.

STATE FISCAL ACCOUNTABILITY AUTHORITY  
MEETING OF August 13, 2019

REGULAR SESSION  
ITEM NUMBER 11

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AGENCY: State Fiscal Accountability Authority

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SUBJECT: Future Meeting

The next regular meeting of the State Fiscal Accountability Authority will be held at 10:00 a.m. on Tuesday, October 15, 2019, in Room 252, Edgar A. Brown Building.

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AUTHORITY ACTION REQUESTED:

Agree to meet at 10:00 a.m. on Tuesday, October 15, 2019, in Room 252, Edgar A. Brown Building.

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ATTACHMENTS: