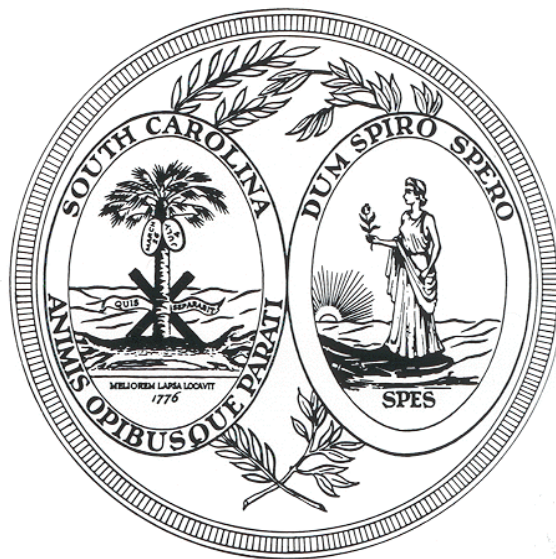


January 2005

A Limited-Scope Review of State Purchasing Overseen by the Budget and Control Board



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Report to the General Assembly

**A Limited-Scope Review
of State Purchasing
Overseen by the
Budget and Control Board**

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Synopsis

The General Assembly asked the Legislative Audit Council to conduct an audit of “competitive best value bidding” purchases. Under state law, government officials may use best value bidding, or a similar process called “competitive sealed proposal,” where factors other than price are considered in awarding state contracts. We reviewed best value bidding and competitive sealed proposal purchasing of goods and services and information technology by the Budget and Control Board. Our findings are summarized below.

- ❑ The Budget and Control Board has instructed procurement evaluation panels (persons who score criteria used to award contracts) not to place documentation of their analysis in the procurement files, which are subject to public inspection. Evaluation score sheets that are in the procurement files contain only “number scores” with no information on what the scores are based.
- ❑ The Budget and Control Board has not consistently provided its rationale for the use of procurement methods in which contracts may be awarded to vendors who do not have the lowest price. We did not locate written justification in 8 (27%) of the 30 cases that we reviewed.
- ❑ Conflict of interest statements would help to ensure that panel members who score proposals are unbiased. Statements were not always required or obtained from procurement evaluation members.
- ❑ The Budget and Control Board does not accurately or consistently record purchases in its database. Accurate and consistent information is needed to assist the legislature in oversight of state government operations.
- ❑ State law requires that companies that sell goods and services to state government be given a pricing preference if they are South Carolina “residents” or if their products are made or grown in South Carolina. It is questionable whether in-state purchasing preferences result in net benefits to South Carolina’s economy or to its government. Although some companies benefit from these purchasing preferences, their effect includes higher prices paid by South Carolina taxpayers for the goods and services needed to operate state government. Also, South Carolina companies seeking to do business with other state governments are being penalized because of our preferences.

Synopsis

Introduction

Audit Objectives

Members of the General Assembly asked the audit council to review a state government purchasing process known as “*competitive best value bidding*,” in which contracts may be awarded to vendors who do not have the lowest price. State law allows government officials to use this or a similar procurement method called the “*competitive sealed proposal*” process when there are factors that offset higher prices, such as better quality or lower long-term costs. [The “competitive sealed proposal” process is often referred to as a “request for proposal” (RFP) process.]

We identified the audit objectives after our preliminary audit work and communication with the legislators who requested the audit. We focused on the objectives listed below, as they relate to state government purchasing of goods and services, including information technology.

- Determine whether the state has adequate controls to ensure that competitive best value bidding and competitive sealed proposal purchasing are conducted in an objective manner and are supported with sufficient analysis.
- Determine the costs and benefits of including in-state vendor preferences in the purchasing process.

Scope and Methodology

In conducting this audit, we reviewed purchasing records and interviewed staff of the materials management office and the information technology management office of the Budget and Control Board. The purchases we reviewed were made by the Budget and Control Board for other state agencies and the board itself. We also obtained information from purchasing officials in Florida, Georgia, North Carolina, Tennessee, and Virginia.

We used computer-processed data in conducting this audit. Where such data were significant to our findings, we performed limited tests of their validity and reliability.

We did not review the procurement of building construction, building renovation, road construction, and related items. The period on which our review focused was FY 02-03 and FY 03-04.

This audit was conducted in accordance with generally accepted government auditing standards.

Background

The South Carolina Budget and Control Board is the state's central administrative agency which provides oversight for operations such as procurement, human resources, information technology and fiscal matters. Under the authority of South Carolina Code §11-35-1210(1), the Budget and Control Board has established dollar limits within which state agencies may make their own purchases. For larger dollar amounts, most state agencies are required to have their purchases conducted by the Budget and Control Board. Two separate offices of that board process purchases for goods and services and information technology (see Appendix A).

Below is a summary of three common methods of purchasing used in state government, which have similar-sounding names. In each method, state law allows price as well as factors other than price to be considered. The methods differ in the manner in which non-price factors are addressed.

Also below, is a summary of the law that requires state government to give pricing preferences to certain vendors.

Competitive Sealed Bidding

In the "competitive sealed bid" method, state agencies establish minimum specifications for the goods or services that they seek to buy and minimum qualifications for the vendors who submit bids. The agencies then issue invitations for bids. After reviewing vendor bids, the state agencies award contracts to the vendor with the lowest price who meets the minimum product specifications and vendor qualifications.

Product specifications may include non-price factors, such as design, performance, and the long-term cost of operation and ownership. Section 11-25-1520(11) of the South Carolina Code of Laws allows agencies to screen vendors for their qualifications prior to the bidding process.

Competitive Sealed Proposal

In the "competitive sealed proposal" method, state law allows but does not require that price be a factor in awarding a state contract. State agencies are permitted to rank vendor proposals based on price and non-price factors, such as product design, performance and reliability. Under this method, state agencies may award contracts to vendors that do not have the lowest price when it is determined to be "most advantageous" to the state.

Budget and Control Board officials stated that, in most instances, the purchasing agency will establish an evaluation panel to assess vendors' proposals, although a panel is not required by law.

Competitive Best Value Bidding

The “competitive best value bid” method is similar to the competitive sealed proposal method. A primary difference is that, under competitive best value bidding, at least 60% of the determination of the winning bid must be based on price.

Table 1.1: FY 03-04 Budget and Control Board Purchases by Procurement Method (Excluding Information Technology)

PROCUREMENT METHOD	AMOUNT OF PURCHASES
Competitive Sealed Bidding	\$92,820,192 (27%)
Best Value Bidding	46,712,898 (14%)
Competitive Sealed Proposal	135,116,570 (39%)
Other*	67,460,913 (20%)
TOTAL	\$342,110,573 (100%)

* Other includes fixed-price and request for quotation procurements.

As shown in the table above, the Budget and Control Board records indicate that best value bid and competitive sealed proposal purchases in FY 03-04 for goods and services, not including information technology, made up 53% of the dollar amount of purchases made.

We found problems with the reliability of the board’s procurement data. Our finding is detailed on page 11.

Pricing Preferences

State law requires that pricing preferences be given to certain vendors when the government buys goods or services using the competitive sealed bid or best value bid purchasing methods. Vendors are required to be given pricing preference if they are South Carolina “residents” or if their products are made or grown in South Carolina. Vendors who are not South Carolina residents are required to be given a preference if their products are made or grown outside of South Carolina but within the United States.

Chapter 1
Introduction

Audit Results

This chapter contains the findings from our review of best value bidding (BVB) and request for proposal (RFP) purchases processed by the State Budget and Control Board. We concluded that scoring sheets, used as a basis for vendor selection, did not provide adequate documentation of considerations in making procurement awards. In addition, justification for the use of BVB and RFP procurements are not always provided. Our review also indicated problems with the board's procurement data.

Vendor pricing preferences result in higher prices for state government operations. It is questionable whether these preferences provide net financial benefits to the state.

Role of the Budget and Control Board

Agency purchasing certification limits are established by the Budget and Control Board. When an agency's purchase exceeds the amount of its certification, the board provides assistance to the agency to include developing purchasing specifications, advertising solicitations, and providing other resources that will ultimately lead to selection of a vendor for goods and services. The purchasing limits for state agencies for goods and services and information technology range from \$10,000 to \$250,000 (see Appendix B).

The B&CB's materials management office (MMO) assists state agencies in the purchase of goods and services that exceed their limits. The board's information technology management office (ITMO) assists agencies in the purchase of information technology items above their limits.

We reviewed a judgmental sample of awards for best value bid and request for proposal purchases made by MMO and ITMO in FY 02-03 and FY 03-04 (see Table 2.1). Examples of purchases for goods and services included janitorial services, apparel, and heating and cooling systems. Information technology items included computer hardware and software and maintenance.

The Budget and Control Board ... assists state agencies in the purchase of goods and services

Table 2.1: Sample of B&CB Best Value Bidding and Request for Proposal Purchases, FY 02-03 to FY 03-04

PROCUREMENT METHOD	NUMBER OF SOLICITATIONS*	NUMBER OF VENDOR AWARDS**	AWARDS SAMPLES (% OF VENDOR AWARDS)
MMO Purchases			
Request for Proposal	107	159	24 (15%)
Best Value Bid	16	59	6 (10%)
ITMO Purchases			
Request for Proposal	44	51	9 (18%)
Best Value Bid	15	17	6 (35%)

* A solicitation is a request for vendors to submit bids or proposals.

** An award is the act of accepting a bid or proposal submitted by one or more vendors.

B&CB General Guidelines for Best Value Bidding and Request for Proposal Purchasing

A Budget and Control Board official summarized the process for best value bid and request for proposal purchases as follows:

- The board receives information to include a state purchase requisition from an agency on its specific purchasing needs.
- Board staff through communication with and input from the agency develop requirements such as procurement specifications, the scope of work, and the award criteria.
 - For BVB purchases, state law provides that cost must be at least 60% of the award criteria.
 - For RFP purchases, state law allows, but does not require, that price be an award criteria.

Non-price factors may include considerations such as experience and program design.

- Board staff prepare and advertise the solicitation. This process involves pre-proposal or pre-bid conferences, and compilation of questions and answers regarding the solicitation. Board staff make amendments to the solicitation as needed.
- After the deadline for response to the solicitation, board staff review the proposals received for responsiveness. As needed, staff clarify proposals or bid offers.

- Board staff coordinate activities with panels of agency officials who score the responsive proposals for criteria other than cost.
- Where appropriate, staff calculate cost scores and tabulate other scores to apply to score sheets at the final selection meeting.
- Upon confirmation of the highest composite score, board staff take the lead in negotiating with the vendor receiving the highest score. If unsuccessful, staff conduct negotiations with the next highest scored vendor in order until an agreement is reached.
- *If the procurement is over \$50,000*, board staff prepare, publish, and post a Notice of Intent to Award. The intent to award has a 16 day waiting period. The notice is mailed to all vendors who offered proposals to the BVB or RFP and is posted to the board's website.
- *If the procurement is less than \$50,000*, board staff prepare, publish and post a Statement of Award. Upon posting, the award becomes effective immediately.

Documentation of Proposal Analysis

Panel evaluator scores are the primary basis used to make procurement awards. We found that evaluator score sheets contain only number scores with no information on what the scores are based on. As a result, it is difficult to determine why one vendor's proposal was scored higher or lower than that of another.

Although not required by state law or regulation, the Budget and Control Board often uses evaluation panels made up of purchasing agency officials to review and score proposals submitted in response to a BVB or RFP solicitation. An evaluation panel was used in 33 (73%) of the 45 procurement awards that we reviewed. The vendors with the highest scores were awarded the contracts in all samples where that data was included.

Both the materials management office and the information technology management office have developed instructions for evaluation panel members. According to the operating procedures of both offices, evaluators should make no comments or documentation of scoring on the score sheets. MMO's instructions for the evaluation panel state:

Worksheets and evaluators' notes will not be taken up or become part of the file. Such notes are subject to the Freedom of Information Act even when in the possession of the evaluator. Do not write in the proposals or on the final score sheets, which when turned in, become part of the procurement file.

In addition, an official of the information technology management office told two audit council employees that staff of that office encourages panel members to destroy documentation pertaining to award decisions.

When state officials instruct persons participating in the procurement process not to comment on or to destroy information, the purpose of the law is not met.

The Freedom of Information Act, S.C. Code §30-4-10 *et seq.*, governs which information must be disclosed by state agencies to the public. Additionally, the disclosure of procurement information is specifically addressed in the State Procurement Code. South Carolina Code §11-35-410 states:

Procurement information shall be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act) with the exception that commercial or financial information obtained in response to a "Request for Proposal" or any type of bid solicitation which is privileged and confidential need not be disclosed.

Examples of privileged and confidential information include:

- Customer lists.
- Design concepts, including methods and procedures.
- Biographical data on key employees of the bidder.

Further, this law states that a vendor submitting a bid should indicate what parts of his/her proposal contain trade secrets. Any information not identified in the bid as a trade secret is accessible to the public.

According to Budget and Control Board management, South Carolina Code §11-35-410 exempts from public disclosure "evaluative documents pre-decisional in nature" and is not limited to privileged and confidential information. However, we concluded that this exemption applies *only* to privileged and confidential information.

Sections 11-35-1528(8) and 11-35-1530(9) of the South Carolina Code of Laws provide that contract files for best value bid and request for proposal purchases shall contain the basis of awards and must be sufficient to satisfy external audits. While a number score shows that one vendor had a higher score, the basis of the score is not evident. Information on the basis of the score would be beneficial to determine the extent that vendor proposals were analyzed.

The intent of the Freedom of Information Act is to provide information on state operations in an open and public environment. When state officials instruct persons participating in the procurement process not to comment on or to destroy information, the purpose of the law is not met. There may be a perception that the decision-making process is unfair.

Budget and Control Board management stated “Upon reading [the LAC] draft, we immediately reviewed with all staff the proper instructional language for panel members.”

Recommendation

1. The State Budget and Control Board should develop and implement policies to ensure that the basis of proposal scores is adequately documented.
-

Justification of the Procurement Method

South Carolina Code §11-35-1528 and §11-35-1530 require that agencies provide a justification in writing when the best value bid or the request for proposal procurement method rather than the competitive sealed bidding method is used. The materials management office does not always provide justification for using the best value bidding and request for proposal procurement methods. In 8 (27%) of the 30 cases that we sampled, MMO staff did not complete a justification form as required. (ITMO provided a justification for the purchasing method used in the cases that we reviewed.)

According to MMO’s operating procedures, the purchasing agency is to provide a justification whenever the competitive sealed proposal method is not used. Then, MMO staff is to complete a justification form citing conditions or reasons why the method used was the most appropriate.

Documentation of the reasons for selection of a procurement method would help to ensure that there is adequate consideration of the method that is most advantageous to the state. For instance, a competitive sealed bid solicitation

(where the vendor with the lowest price who meets other requirements is considered first) may be more beneficial to the state.

Recommendation

2. As required by state law, the materials management office of the State Budget and Control Board should complete a justification form when the best value bid and request for proposal purchasing methods are used.

Conflict of Interest Statements

The information technology management office does not require written conflict of interest statements from persons who serve on procurement evaluation panels. Our sample of awards from that office indicated that panels were used in 11 (73%) of the 15 procurement awards that we reviewed.

The materials management office does require a written statement from panel members. However, we found that the office did not obtain a written statement from persons participating on 5 (23%) of the 22 evaluation panels used.

The operations procedures for both ITMO and MMO address conflicts of interest for procurement evaluation panels. The instructions for evaluation panels from both offices provide examples of potential conflicts of interest to include:

- Part ownership in any company submitting an offer.
- Family members working for or having part ownership in a company submitting an offer.
- Any other reason why an evaluation panel member cannot give an impartial evaluation.

The National Institute of Government Purchasing has developed a code of ethics which addresses “operational situations where a conflict of interest may be involved.” According to an institute official, persons who serve on procurement panels should sign conflict of interest statements as a means to ensure impartiality in procurement decisions. Also, according to a manager of the Tennessee Department of General Services, that agency requires purchasing officials to sign standard conflict of interest forms.

After reading our draft report, Budget and Control Board management stated “We agree that conflict of interest statements should be signed by evaluators in all cases and have instituted this as a uniform practice.”

Recommendation

3. The information technology management office and the materials management office of the State Budget and Control Board should require persons serving on procurement evaluation panels to complete a conflict of interest statement. The offices should maintain these statements in procurement award files.

Procurement Data

The materials management office and the information technology management office do not maintain accurate and consistent records on the award amount by purchase and thus, the total amount awarded by procurement method used. Complete and accurate information is needed to assist the legislature in oversight of state government operations.

Inconsistent Reporting Methodologies

In reviewing a sample of procurement awards for FY 02-03 and FY 03-04, we found that MMO and ITMO are inconsistent in the categories of data in which they report the award amounts. For example:

- Some awards had no cost, resulting in an amount equivalent to \$0.
- Other award amounts were equivalent to the costs of a contract over a five-year period.
- Still other awards represented hourly or monthly rates.

Also, a Budget and Control Board report which was to contain only awards that had been made contained awards that had been cancelled. We found that two purchases that we had included in our sample had been cancelled. These awards totaled \$1,309,888 and were included in the total award amount for best value bid purchases.

Inconsistent Reports

During our audit, the Budget and Control Board provided us with multiple reports of purchases made in FY 02-03 and FY 03-04. None of these reports, however, were consistent with each other, further raising questions about the reliability of the data.

Table 2.2 contains an example of inconsistent reporting, in which different dollar amounts were reported by the materials management office in August and October 2004.

Table 2.2: Discrepancies in the Amounts of MMO Procurements

	DATES REPORTS PROVIDED		DIFFERENCE
	AUGUST 2004*	OCTOBER 2004**	
FY 02-03	\$312,571,874	\$353,632,000	\$41,060,126 (13%)
FY 03-04	\$198,085,655	\$350,145,348	\$152,059,693 (77%)

* Award amount from the Budget and Control Board's Advanced Procurement System (APS) report.

** Award amount calculated by materials management office staff for internal use.

We asked for similar information from the information technology management office, for comparison purposes, but after four requests, the data was not provided. Nevertheless, a printout of purchases processed by ITMO contained award amounts that were left "blank" and other amounts recorded as \$1.

The reports we received from the Budget and Control Board were also inconsistent and inaccurate regarding the number of purchasing solicitations and awards made. A list of all awards for FY 02-03 and FY 03-04 was provided by the board in August 2004. Then, after board officials reviewed our draft audit report in November 2004, another report was provided.

Following are examples of information received from the board.

Best Value Bid Purchases
<ul style="list-style-type: none">• Both MMO reports included two solicitations that were awarded after the close of FY 03-04.• Both ITMO lists included two awards that were cancelled.
Request for Proposal Purchases
<ul style="list-style-type: none">• The MMO November report did not include 25 solicitations that were on the August report.• The MMO November report included nine solicitations that were not on the August report.• Both MMO reports included four solicitations that were awarded after the close of FY 03-04.

Conclusion

The Budget and Control Board has not developed policies and procedures regarding how purchases are to be recorded and reported. A 2000 instructional manual on the B&CB procurement tracking system does not contain information on how staff is to report the award amount. Budget and Control Board management stated that they are working with staff to ensure that data on the award amount is reported in a consistent manner.

Recommendation

4. The materials management office and the information technology management office of the State Budget and Control Board should ensure that procurement information is determined and recorded in an accurate and consistent manner.

Resident Vendor and In-State Product Preferences

State law requires that vendors who sell goods and services to state government, through best value bidding and competitive sealed bidding, be given a pricing preference if they are South Carolina “residents” or if their products are made or grown in South Carolina. Preferences are also required for vendors whose products are made or grown outside of South Carolina but within the United States.

It is questionable whether in-state purchasing preferences result in net benefits to South Carolina’s economy or to its state government. Although some companies benefit from these purchasing preferences, their effect includes higher prices paid by South Carolina taxpayers for the goods and services needed to operate state government. Competition is reduced. Additional staff time is required for state government to administer a system of preferences. Also, South Carolina companies seeking to do business with other state governments are being penalized because of our preferences.

South Carolina Law

Section 11-35-1524 (A) of the South Carolina Code of Laws states:

A preference of 7% must be provided to vendors who are residents of South Carolina or whose products are made, manufactured, or grown in South Carolina

§11-35-1524 (F) states:

If a vendor qualifies as a resident vendor *and* is bidding a product made, manufactured, or grown in South Carolina, an additional 3% preference must be given if claimed by the bidder. [*Emphasis added.*]

South Carolina law also requires that the state government give a 2% pricing preference to vendors whose products are made, manufactured or grown outside of South Carolina but within the United States.

The term “resident vendor” is defined broadly in state law. For example, some companies that have headquarters out-of-state but which are authorized to do business in South Carolina may meet the definition of “resident vendor.”

These preferences apply to any procurement when the total contract award is \$10,000 or more and the price of a single unit is less than or equal to \$30,000. Construction-related services and motor vehicles are exempt from these preferences.

South Carolina companies seeking to do business with other state governments are being penalized because of our preferences.

Direct Effects of Pricing Preferences

There are several direct effects of purchasing preferences for resident vendors, in-state products, and United States products. Preferences have increased sales by some resident vendors and have increased sales of in-state products to South Carolina's state government. Higher in-state sales can result in greater profits, more jobs, and additional tax dollars paid to state government.

Preferences, however, have also caused South Carolina taxpayers to pay higher prices for the goods and services needed to operate state government. In FY 02-03 and FY 03-04, according to the Budget and Control Board, state agencies awarded contracts worth approximately \$5.3 million to vendors who would not have been awarded contracts without the resident vendor, in-state product, and United States product preferences. As a result, state government incurred an extra cost of approximately \$170,000 (3.3%). (On page 11, we note that improvements are needed in the data reporting system of the Budget and Control Board.)

In addition, Budget and Control Board staff report that operating a system of preferences has increased the cost of operating the state's procurement system.

Reduced Competition

In addition to the higher prices directly caused by preferences, there may be an indirect effect, caused by reduced competition. Some out-of-state companies may be discouraged from competing for South Carolina contracts because of the competitive disadvantage imposed by preferences. When fewer companies compete for state contracts, the result can be higher prices.

Retaliatory Penalties Imposed by Other States

South Carolina's resident vendor and in-state product preferences place South Carolina vendors at a competitive disadvantage when they attempt to sell goods and services to the governments of other states. According to a 2002-2003 survey by the National Association of State Purchasing Officials, more than half of state governments in the U.S. impose penalties on companies from states that have resident vendor or in-state product preferences.

Florida, Georgia, North Carolina, Tennessee, and Virginia are examples of states that do not have resident vendor or in-state product preferences for most of the goods and services they buy (except in the event of tie bids in some states). Retaliatory penalties, however, have been imposed on South

Carolina companies and products by Georgia, North Carolina, and Virginia that are equal to the penalties we impose on their companies and products. New York has *banned* products from six states that have preferences on most goods and services, one of which is South Carolina.

Retaliatory penalties can have a negative effect on sales by South Carolina vendors, and of South Carolina products, to other state governments. Lower out-of-state sales can result in diminished profits, fewer South Carolina jobs, and a reduction in taxes paid to South Carolina's state government.

Because South Carolina has exempted construction-related services and motor vehicles from its resident vendor and in-state product preference laws, these products are less likely to be subject to retaliatory penalties in other states.

Conclusion

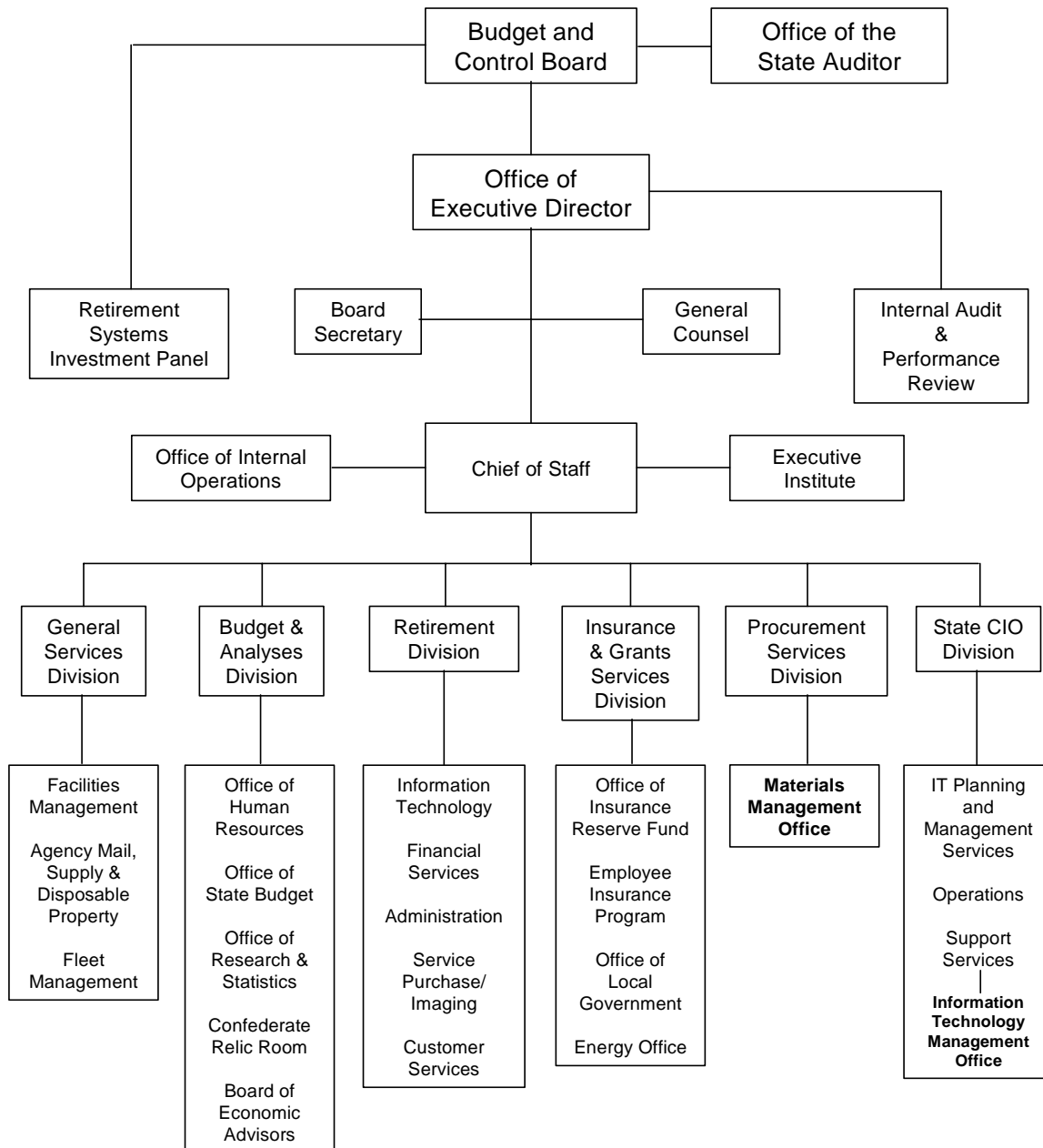
It is questionable whether in-state purchasing preferences result in net benefits to South Carolina's economy or to its state government. Such preferences have increased the prices paid by taxpayers for the goods and services needed to operate state government. Competition has been reduced. The state government's purchasing process has been made less efficient. And retaliatory penalties have been imposed by other states on South Carolina's companies and products.

In 1965, 1970, 1978, 1981, 1982, 1985, 1990, and 1992, the National Association of State Purchasing Officials recommended the elimination of in-state purchasing preferences. In a 1997 audit of South Carolina, KPMG Peat Marwick also recommended the elimination of in-state purchasing preferences.

Recommendation

-
5. The General Assembly should amend state law to delete state government purchasing preferences for resident vendors, in-state products, and United States products.

Budget and Control Board Organization Chart



As of June 2004, the board, excluding the Office of the State Auditor, had 1,136 employees. The State Auditor had 43 employees.

Source: Budget and Control Board.

Appendix A
Budget and Control Board Organization Chart

Agency Limits Per Purchase as of May 2004

STATE AGENCY	GOODS AND SERVICES*	INFORMATION TECHNOLOGY
1. Accident Fund	\$25,000	\$25,000
2. Adjutant General	\$25,000	\$25,000
3. Administrative Law Judge Division	\$25,000	\$25,000
4. Agriculture, Department of	\$25,000	\$25,000
5. Aiken Technical College	\$25,000	\$25,000
6. Alcohol and Other Drug Abuse Services	\$25,000	\$25,000
7. Appellate Defense, Department of	\$25,000	\$25,000
8. Archives and History, Department of	\$25,000	\$25,000
9. Arts Commission	\$25,000	
10. Attorney General's Office	\$25,000	\$25,000
11. Blind, Commission for the	\$25,000	\$25,000
12. Budget and Control Board	\$25,000	\$25,000
13. Charleston Naval Complex Development Authority	\$25,000	\$25,000
14. Central Carolina Technical College	\$25,000	\$25,000
15. Citadel, The	\$100,000	\$100,000
16. Clemson University	\$225,000	\$225,000
17. Coastal Carolina	\$100,000	\$50,000
18. College of Charleston	\$200,000	\$200,000
19. Commerce, Department of	\$25,000	\$25,000
20. Commission on Higher Education	\$25,000	\$25,000
21. Comptroller General, Office of the **	\$10,000	\$10,000
22. Consumer Affairs, Department of	\$25,000	\$25,000
23. Corrections, Department of	\$200,000	\$100,000
24. Deaf and Blind, School for the	\$50,000	\$50,000
25. Denmark Technical College	\$25,000	\$25,000
26. Disabilities and Special Needs, Department of	\$100,000	\$100,000
27. Education Lottery	\$25,000	\$25,000
28. Education, Department of	\$25,000	\$25,000
29. Education Oversight Commission	\$25,000	\$25,000
30. Educational Television Commission	\$25,000	\$25,000
31. Election Commission	\$25,000	\$25,000
32. Employment Security Commission	\$25,000	\$25,000
33. Ethics Commission	\$25,000	\$25,000
34. Financial Institutions, Board of	\$25,000	\$25,000
35. Florence-Darlington Technical College	\$50,000	\$50,000
36. Forestry Commission	\$50,000	\$25,000
37. Francis Marion University	\$150,000	\$150,000
38. Governor's Office	\$25,000	\$25,000
39. Greenville Technical College	\$25,000	\$25,000
40. Health and Environmental Control, Department of	\$200,000	\$100,000
41. Health and Human Services, Department of	\$25,000	\$100,000
42. Higher Education Tuition Grants	\$25,000	\$25,000
43. Horry-Georgetown Technical College	\$30,000	\$30,000
44. Housing Finance and Development Authority	\$25,000	\$25,000
45. Human Affairs Commission	\$25,000	\$25,000
46. Indigent Defense, Commission	\$25,000	\$25,000
47. Insurance, Department of	\$25,000	\$25,000
48. John De La Howe School	\$25,000	\$25,000
49. Judicial Department	\$25,000	\$25,000
50. Juvenile Justice, Department of	\$50,000	\$50,000

**Appendix B
Agency Limits Per Purchase as of May 2004**

STATE AGENCY	GOODS AND SERVICES*	INFORMATION TECHNOLOGY
51. Labor Licensing and Regulation, Department of	\$50,000	\$50,000
52. Lander University	\$100,000	\$100,000
53. Law Enforcement Division	\$25,000	\$25,000
54. Legislative Audit Council	\$25,000	\$25,000
55. Library, State	\$25,000	\$25,000
56. Lieutenant Governor's Office	\$25,000	\$25,000
57. Medical University of South Carolina	\$100,000	\$100,000
58. Mental Health, Department of	\$100,000	\$50,000
59. Midlands Technical College	\$25,000	\$25,000
60. Minority Affairs, Commission for	\$25,000	\$25,000
61. Motor Vehicles, Department of	\$50,000	\$50,000
62. Museum Commission, State	\$25,000	\$25,000
63. Myrtle Beach Air Force Base Redevelopment	\$25,000	\$25,000
64. Natural Resources, Department of	\$50,000	\$50,000
65. Northeastern Technical College	\$25,000	\$25,000
66. Orangeburg-Calhoun Technical College	\$25,000	\$25,000
67. Patient Compensation Fund	\$25,000	\$25,000
68. Parks, Recreation, and Tourism, Department of	\$25,000	\$25,000
69. Patriots Point Development Authority	\$25,000	\$25,000
70. Piedmont Technical College	\$25,000	\$25,000
71. Probation, Pardon and Parole, Department of	\$25,000	\$25,000
72. Procurement Review Panel	\$25,000	\$25,000
73. Prosecution Coordination, Commission on	\$25,000	\$25,000
74. Public Safety, Department of	\$50,000	\$50,000
75. Public Service Commission	\$25,000	\$25,000
76. Revenue, Department of	\$25,000	\$25,000
77. Savannah River Site Redevelopment Authority	\$25,000	\$25,000
78. Sea Grant Consortium	\$25,000	\$25,000
79. Second Injury Fund	\$25,000	\$25,000
80. Secretary of State	\$25,000	\$25,000
81. Sentencing Guidelines Commission	\$25,000	\$25,000
82. Social Services, Department of	\$50,000	\$50,000
83. Spartanburg Technical College	\$25,000	\$25,000
84. State Auditor	\$25,000	\$25,000
85. State Technical and Comprehensive Education	\$25,000	\$25,000
86. State University, South Carolina	\$25,000	\$25,000
87. Supreme Court	\$25,000	\$25,000
88. Technical College of the Lowcountry	\$25,000	\$25,000
89. Transportation, Department of	\$250,000	\$100,000
90. Treasurer's Office	\$25,000	\$25,000
91. Tri-County Technical College	\$25,000	\$25,000
92. Trident Technical College	\$100,000	\$100,000
93. University of South Carolina	\$225,000	\$225,000
94. Vocational Rehabilitation, Department of	\$25,000	\$25,000
95. Will Lou Gray Opportunity School	\$25,000	\$25,000
96. Williamsburg Technical College	\$25,000	\$25,000
97. Winthrop University	\$200,000	\$50,000
98. Workers' Compensation Commission	\$25,000	\$25,000
99. York Technical College	\$25,000	\$25,000

* Goods and services unique to an agency, such as drugs and construction, have higher limits for some agencies.

** By agency request, the purchasing limit is less than \$25,000.

Source: S.C. Budget and Control Board.

Agency Comments

Appendix C
Agency Comments

STATE OF SOUTH CAROLINA
State Budget and Control Board
OFFICE OF THE EXECUTIVE DIRECTOR



MARK SANFORD, CHAIRMAN
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

RICHARD ECKSTROM
COMPTROLLER GENERAL

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

ROBERT W. HARRELL, JR.
CHAIRMAN, WAYS AND MEANS COMMITTEE

FRANK W. FUSCO
EXECUTIVE DIRECTOR

P.O. BOX 12444
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-2320
Fax: (803) 734-2117

December 10, 2004

George L. Schroeder
Director
South Carolina Legislative Audit Council
1331 Elmwood Ave., Suite 315
Columbia, S.C. 29201

Dear Mr. Schroeder:

This is a response to the audit, *A Limited-Scope Review of State Government Purchasing Overseen by the Budget and Control Board*. We are pleased that your auditors did not find a single case in which a procurement was awarded in an erroneous, arbitrary or illegal manner. Indeed, state law establishes elaborate protections to ensure that bidders have every opportunity to have their concerns about a procurement decision heard promptly by independent parties.

As noted in the audit, we have made several technical changes in our procedures to ensure that documentation of procurement method used and that conflict of interest statements are signed in all cases. The section concerning resident vendor and in-state product preferences concerns matters of law that can only be addressed by the General Assembly.

There is a need to clarify several points raised by your auditors.

Documentation of evaluation scores. The LAC audit takes a portion of state law out of context in claiming that evaluator's notes should be included in procurement files. The Consolidated Procurement Code explicitly states that:

evaluative documents pre-decisional in nature such as inter- or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the pre-decisional deliberations.

Evaluators are free to use scratch pads and informal notes to assist them in the evaluation process. Such notes would be inappropriate additions to the official file because they are

preliminary, often illegible and usually very informal working notes that provide an incomplete or misleading picture of an evaluator's overall analysis.

We agree with the philosophy that any government process should be open to maximum sunshine and that this is particularly important in the case of government purchasing. Notice of all evaluation panel meetings are posted in accordance with law and we have enacted procedures to prevent bidders from attempting to improperly use trade secret provisions to block documents from being exempt from disclosure under FOIA.

Your report also states that "an official of the information technology management office told two audit council employees that staff of that office encourages panel members to destroy all notes pertaining to award decisions." We were unable to identify which employee made this erroneous statement. Evaluators are instructed that they have no obligation to maintain such documents and those that are maintained are subject to the FOIA. Upon hearing this assertion, we instructed all procurement officials as to the law and policy governing this issue.

Procurement Data. When you made us aware that you had received inconsistent data, we immediately conducted a review to provide you accurate information. We found the cause of the confusion was that three different individuals had provided information to the council without submitting the data for central quality review. This pointed out that our policy on data entry is inconsistent and we are assessing this procedure. These data systems are used purely for internal purposes and is not entered into the state accounting system. We are currently working to secure a statewide enterprise procurement information system to improve management decision-making at all levels.

Sincerely,

A handwritten signature in black ink that reads "Frank W. Fusco". The signature is written in a cursive, slightly slanted style.

Frank W. Fusco