

Improving Vendor Performance Management and Tracking across State Agencies

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Problem Statement

According to the Department of Administration's Transparency website, the FY 19-20 budget for the State of South Carolina was \$28.9 billion dollars. A significant portion of these funds are expended through the procurement process. In FY19, the Procurement Services Division (PSD) awarded 807 total contracts with a value of \$1.7 billion. During the same period, state agencies awarded 1,565 total contracts with a value of \$1.8 billion. The American Bar Association saw a need for improving the procurement process at the state and local level and published its first Model Procurement Code for State and Local Governments in 1979. South Carolina was an early adopter of this Code, adopting the Consolidated Procurement Code in 1981. The SC Consolidated Procurement Code establishes the rules which must be followed in the expenditure of public funds. Both the ABA Model Procurement Code and the South Carolina Consolidated Procurement Code include the concept of responsible bidders or offerors. Regardless of the dollar amount of the procurement, the Code requires "Responsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record for similar contracts" S.C. Code Ann. § 11-35-1810(1). The Code defines a responsible bidder or offeror as "a person who has the capability in all response to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance." S.C. Code Ann. § 11-35-1410(8). The Code also anticipates that agencies will share information regarding vendor performance by stating "Public procurement units, as defined in Section 11-35-4610, may

provide information to one another relating to the responsibility or prior performance of a bidder or offeror, or provide any other information about a bidder or offeror that is otherwise related to procurement” S.C. Code Ann. § 11-35-1810(4).

The ability to document a vendor’s performance on prior contracts is critical to evaluating vendor responsibility. Currently, each agency measures a vendor’s performance independently. There is no standardized process for collecting, tracking, and reporting a vendor’s performance on contracts across the state. Nor is there an established method for agencies to share this information with each other. A centralized tracking and reporting process is needed to monitor vendor performance on contracts statewide.

Data Collection

The collection of data will be in the following form:

1. Data on current processes (if any) at various state agencies for tracking vendor performance. The data source is procedure manuals for state agencies.
2. Data that is currently reviewed when determining a vendor’s responsibility. The data source is the procurement code and procedure manuals.
3. Potential impact of a standardized process of tracking/reporting of vendor performance. The data source is procurement managers at state agencies.
4. Best practices in use by other states when tracking vendor performance. The data source is information obtained through the National Association of State Procurement Officials (NASPO) and public websites of procurement offices in other states.

Data Analysis

1. In order to determine current processes in place at various state agencies for tracking vendor performance, I reviewed procurement manuals from 30 different state agencies. These manuals are for a mix of higher education institutions, large agencies and small agencies with different levels of procurement certification. A summary of the review is included in Attachment A. Most of the manuals reviewed (25 of 30) indicated that awards were to be issued to responsible offerors. Of the manuals that indicated that awards were to be made to responsible vendors, a small fraction (5 of 25) indicated items that could be checked to determine a vendor's responsibility but did not indicate a specific process to follow. Five (5) manuals made no mention of vendor responsibility in conjunction with the awarding of contracts. No manual indicated a specific process to follow or where to find information regarding responsibility of bidders or offerors.

Further review was conducted to determine what processes, if any, were used to track vendor performance on contracts. Many of the manuals (19 of 30) included some process for tracking performance on contracts. The majority of these paraphrased the Contract Administration Guide (Attachment B) published by the Division of Procurement Services. This guide primarily addresses steps to take when a vendor is not meeting their contractual obligations. The guide stresses the importance of documenting issues of contract performance. However, this documentation is maintained within the contract file not in any central repository. The guide also includes many forms, but the majority of these forms are templates for communication with non-performing vendors.

The Contractor Performance Report in the Guide is simply a cover page which includes general information regarding the contract at issue, the procurement manager, the vendor, and vendor contact information. The Report does not give any guidance on what information to include in the report or include suggested areas of performance.

The limitations of using this guide are threefold:

- (1) There is no central repository of information
- (2) There is no standard form or guidance for providing information
- (3) There is no method for recording satisfactory or above satisfactory performance as the guide is geared towards incidence of vendor non-performance.

2. Agency procurement manuals were also used to identify the factors currently considered in determining a vendor responsibility. The review of procurement manuals from agencies revealed 5 manuals which listed items that could be considered when determining an offeror's responsibility. A closer inspection of these 5 manuals indicates that all of them simply restated or paraphrased Regulation 19-445.2125 which states:

Factors to be considered in determining whether the state standards of responsibility have been met include whether the 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.

The Procurement Manager's Manual (Attachment C) from the Procurement Services Division (PSD) expands on this list by including the following, "To make a determination of responsibility, the Procurement Officer may conduct a review of the Offeror's financial statements, letters of credit, past liens/judgements, reference checks, Dun & Bradstreet (required for contracts over \$1,000,000) Report, and the Secretary of State's website to determine good standing." Past performance is included in items to consider in manuals for agencies and the PSD but there is no guidance on how information on past performance is to be collected, other than utilizing reference checks. Typically, the reference check is done during the evaluation process using references provided by a vendor. For many reference checks, a generic reference check form is used. In some cases, more specific information is requested when conducting a reference check. This process is not effective at identifying problematic vendors. Vendors will provide references which they know will be positive and the questions used tend not to reveal any issues with prior contracts.

3. In order to determine the potential impact of a standardized process of tracking/reporting of vendor performance, I spoke with the Procurement Directors at the Department of Transportation and the Department of Health and Environmental Control. These are two of our large, certified agencies with more robust procurement departments than many smaller agencies. Both Directors identified this as an area of weakness in the system. One of the barriers identified by both DOT and DHEC was obtaining information regarding performance from end users of the contracts. The second was having access to the information that was collected. To paraphrase the DHEC Procurement Director, since the information is kept with the contract, we are at the mercy of someone's memory. Unless the procurement manager was involved in a previous contract where the vendor did not perform, it is unlikely that non-performance will factor in any evaluations of responsibility. This is exacerbated when the non-performance occurs at another agency. Both Directors indicated that any assistance in centralizing vendor performance tracking would be a significant benefit to their agencies.

4. To determine best practices in use by other states when tracking vendor performance, I started with the 2018 Survey of State Procurement Practices issued by NASPO (Attachment D). Forty-eight jurisdictions, including member states and the District of Columbia, responded to this survey. There were 25 responses to the question "If the State Central Procurement Office maintains a record of vendor performance, what aspects do you track and report centrally?" (Attachment E). Nine of these responses

were either “no” or “N/A”. The remaining 18 responses identified varying levels of vendor performance tracking. The majority of responses indicated that other states find themselves in a similar situation as South Carolina. These states provide a mechanism to report issues for a specific contract and the documentation is maintained with the contract file. The reporting mechanism can vary from a procedure to contact the procurement officer, a hard copy form, or a web-based reporting system. Some states maintain this information in a central location where it is available only to staff at the central procurement office. Many of these states indicated plans to expand or improve their processes for vendor performance management.

Four states – Florida, Pennsylvania, Minnesota, and Texas – had access to vendor performance reports on their procurement office websites. Florida maintains a list of vendors who have complaints pending resolution as well as vendors who have been suspended or debarred. Pennsylvania’s Contractor Responsibility Program System (CRPS) is a searchable database that allows users to enter performance issues and must be used to validate responsibility when awarding any contract or purchase order in excess of \$5,000. Minnesota requires agencies to complete a vendor performance report for all contracts for Professional/Technical Services over \$25,000 at contract completion. The vendor performance reports are then maintained in searchable database that is accessed from the central procurement office’s website. Texas allows for online reporting and a searchable database of vendor performance reports for contracts in excess of \$25,000. The Texas program assigns a score for each vendor report and then averages these to provide an overall vendor score. This data indicates

that measuring vendor performance is important to public procurement officials across the nation and that establishing a standardized tracking system is possible.

Implementation Plan

The first step in implementing a vendor performance tracking system is to determine what contracts should be monitored. The 4 states who are currently utilizing tracking systems do not monitor performance for all contracts. South Carolina needs to decide what thresholds will be used to trigger performance monitoring. Some potential thresholds are contract value, contract type (State Term Contract vs. Agency Contract), or goods/services being provided (professional services, information technology). Ideally, the project should begin with a small subset of contracts awarded. As the system matures, the scope of contracts that are tracked should be expanded. The initial determination would be made by management within the PSD.

The second step would be determining what information is to be tracked. Some states only track complaints or problems. Other states collect both negative and positive information. Some states require an end-of-contract evaluation to be completed. South Carolina needs to determine what factors are important to track, develop a rating scale for each factor, and determine at what points data will be collected. A standardized form for collecting information would be created. Ideally, this would be a web-based form which could be completed and submitted on-line. A committee of procurement managers and end users of the contracts included from step one should provide the information required.

The third step would be to establish a method for collecting the information. Some states leverage their eProcurement Systems for performance tracking while others have developed in-

house systems. South Carolina should first investigate if there is existing functionality in the South Carolina Enterprise Information System (SCEIS) which could assist in vendor performance tracking. If there is no functionality, the State should consider if there is commercially-available, off-the-shelf software (COTS) which could provide the necessary requirements. As a last resort, the State could consider developing their own program for tracking purposes. This is a critical step and requires assistance from multiple areas. This would be coordinated by the PSD but would require input from the SCEIS Team and the Division of Technology at the Department of Administration as well as the SFAA Information Technology Department.

The fourth step would be to determine how the information should be used. The State needs to ensure that submitted reports are reviewed and any necessary action taken. Reports should be validated to ensure that the information provided is accurate and up-to-date. Any resolutions to issues should also be included in the tracking system. This would involve the PSD, agency procurement staff, and contract end users.

The fifth step is to ensure the information is disseminated efficiently. The information must be readily accessible to procurement managers across the State. Florida, Pennsylvania, Minnesota, and Texas have much of their information publicly available on their websites. However, additional information is available to users with an ID and Password. The State needs to determine what information will be posted publicly versus what would be protected by user ID's and Passwords. This would involve the PSD as well as agency procurement staff.

The final step would be monitoring the program to ensure compliance. Contract managers will need to be assigned to ensure data is entered. Reports can be run to identify contracts which

meet the established thresholds and identify when information is expected to be entered into the system. The contract manager will need to monitor the system to ensure that all required reports are entered accurately and timely. The contract manager will need to follow-up on any missing reports to ensure they are entered.

Another critical piece of monitoring will be ensuring the accuracy and validity of the data. In the event a vendor receives a negative report, the contract manager will need to follow-up with the agency making the report and the vendor to ensure the issue is accurately captured. If the information captured is erroneous or misleading it will need to be corrected prior to inclusion in the reporting system.

Evaluation Method

Determining the success of this program is difficult since there is not a current, consistent process available for comparison. The current process is ad hoc, varies widely from agency to agency, and even may vary between procurement managers within an agency. Ultimately, procurement managers will be the final voice in the effectiveness of the program. Procurement managers will need to be surveyed to determine if the system is effective. The survey would need to include data collection on the system's ease of use for entering data and for retrieving data on vendor performance. Procurement managers would provide input on the relevance of the information collected – were the reports provided by the system useful in determining responsibility of vendors. Ideally, a series of surveys would be conducted aimed at gauging the effectiveness of the system and making improvements to meet the needs of the procurement managers.

Summary and Recommendations

The data collected indicates that South Carolina is in a similar situation as most states with regard to vendor performance tracking. We understand the importance of measuring vendor performance but aren't doing a very good job of it. If our goal is to improve, there are other states who have blazed the trail. South Carolina should emulate the programs established by Florida, Pennsylvania, Minnesota, and Texas. These are mature programs which form a guide to follow. Initially, South Carolina should limit the scope in order to ensure the program is solidly established. Once the program is on well-utilized and effective for the limited scope, then it can be expanded into other areas. Based on feedback from Procurement Directors at other agencies, this is a needed program. Agencies should adopt and buy-in to the program provided it is implemented effectively. The key to adoption is to limit additional burdens on procurement staff. The goal of the system is to make the procurement process easier and more efficient. The goal is not to add more hurdles. Successful implementation of this system should more quickly identify issues with non-performing vendors and prevent award of contracts to vendors who are non-responsible.

References

NASPO 2018 Survey of State Procurement Practices, Detailed Responses -

<https://www.naspo.org/statessurvey>

State of Florida – Vendor Lists -

https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists

State of Pennsylvania – Contractor Responsibility Program System (CRPS) – End-User Procedure

Documents - <https://www.dgs.pa.gov/Materials-Services-Procurement/Procurement-Resources/Pages/End-User-Procedures.aspx>

State of Minnesota – Professional/Technical Services Contract Evaluations -

https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists

State of Texas – Vendor Performance Report Search - <http://www.txsmartbuy.com/vpts>