Ms. Helen T. Zeigler, Director
Office of General Services
1201 Main Street, Suite 420
Columbia, South Carolina 29201

Dear Helen:

I have attached the South Carolina Department of Transportation’s procurement audit report and recommendations made by the Office of Audit and Certification. I concur and recommend the Budget and Control Board grant the Department a three year certification as noted in the audit report.

Sincerely,

R. Voight Shealy
Materials Management Officer
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
PROCUREMENT AUDIT REPORT
APRIL 1, 1995 - DECEMBER 31, 1997
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**NOTE:** The Department’s responses to issues noted in this report have been inserted immediately following the items they refer to.
Mr. R. Voight Shealy  
Materials Management Officer  
Office of General Services  
1201 Main Street, Suite 600  
Columbia, South Carolina 29201  

Dear Voight:  

We have examined the procurement policies and procedures of the South Carolina Department of Transportation for the period April 1, 1995 through December 31, 1997. As part of our examination, we studied and evaluated the system of internal control over procurement transactions to the extent we considered necessary.

The evaluation was to establish a basis for reliance upon the system of internal control to assure adherence to the South Carolina Consolidated Procurement Code and Department procurement policy. Additionally, the evaluation was used in determining the nature, timing and extent of other auditing procedures necessary for developing an opinion on the adequacy, efficiency and effectiveness of the procurement system.

The administration of the South Carolina Department of Transportation is responsible for establishing and maintaining a system of internal control over procurement transactions. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of control procedures. The objectives of a system are to
provide management with reasonable, but not absolute, assurance of the integrity of the procurement process, that affected assets are safeguarded against loss from unauthorized use or disposition and that transactions are executed in accordance with management's authorization and are recorded properly. Because of inherent limitations in any system of internal control, errors or irregularities may occur and not be detected. Also, projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Our study and evaluation of the system of internal control over procurement transactions, as well as our overall examination of procurement policies and procedures, were conducted with professional care. However, because of the nature of audit testing, they would not necessarily disclose all weaknesses in the system.

The examination did, however, disclose conditions enumerated in this report which we believe need correction or improvement.

Corrective action based on the recommendations described in these findings will in all material respects place the South Carolina Department of Transportation in compliance with the Consolidated Procurement Code and ensuing regulations.

Sincerely,

Larry G. Sorrell, Manager
Audit and Certification
INTRODUCTION

We conducted an examination of the internal procurement operating policies and procedures of the South Carolina Department of Transportation. Our on-site review was conducted March 31, 1998 through April 30, 1998 and was made under Section 11-35-1230(1) of the South Carolina Consolidated Procurement Code and Section 19-445.2020 of the accompanying regulations.

The examination was directed principally to determine whether in all material respects, the procurement system's internal controls were adequate and the procurement procedures, as outlined in the Internal Procurement Operating Procedures Manual, were in compliance with the South Carolina Consolidated Procurement Code and its ensuing regulations.

Additionally, our work was directed toward assisting the South Carolina Department of Transportation in promoting the underlying purposes and policies of the Code as outlined in Section 11-35-20 which include:

1. to ensure the fair and equitable treatment of all persons who deal with the procurement system of this State

2. to provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing values of funds of the State

3. to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process
BACKGROUND

Section 11-35-1210 of the South Carolina Consolidated Procurement Code states:

The (Budget and Control) Board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Office of General Services shall review the respective governmental body's internal procurement operation, shall verify in writing that it is consistent with the provisions of this code and the ensuing regulations, and recommend to the Board those dollar limits for the respective governmental body's procurement not under term contract.

On December 12, 1995, the Budget and Control Board granted the Department the following procurement certifications:

<table>
<thead>
<tr>
<th>Category</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods and Services</td>
<td>$ 50,000 per commitment</td>
</tr>
<tr>
<td>Information Technology in accordance with the approved Information Technology Plan</td>
<td>$ 50,000 per commitment</td>
</tr>
<tr>
<td>Consultants Services</td>
<td>$ 50,000 per commitment</td>
</tr>
<tr>
<td>Construction Services</td>
<td>$ 50,000 per commitment</td>
</tr>
<tr>
<td>Prefabricated Concrete Bridge Spans</td>
<td>$250,000 per commitment</td>
</tr>
<tr>
<td>Aggregate</td>
<td>$250,000 per commitment</td>
</tr>
</tbody>
</table>

Our audit was performed primarily to determine if re-certification is warranted. The Department has requested the following certifications.

<table>
<thead>
<tr>
<th>Category</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods and Services</td>
<td>$100,000 per commitment</td>
</tr>
<tr>
<td>Information Technology</td>
<td>$ 50,000 per commitment</td>
</tr>
<tr>
<td>Consultants Services</td>
<td>$ 50,000 per commitment</td>
</tr>
<tr>
<td>Construction Services</td>
<td>$ 50,000 per commitment</td>
</tr>
<tr>
<td>Prefabricated Concrete Bridge Spans</td>
<td>$250,000 per commitment</td>
</tr>
<tr>
<td>Aggregate</td>
<td>$250,000 per commitment</td>
</tr>
</tbody>
</table>
SCOPE

We conducted our examination in accordance with Generally Accepted Auditing Standards as they apply to compliance audits. Our examination encompassed a detailed analysis of the internal procurement operating procedures of the South Carolina Department of Transportation and its related policies and procedures manual to the extent we deemed necessary to formulate an opinion on the adequacy of the system to properly handle procurement transactions.

We selected judgmental samples for the period July 1, 1995 through December 31, 1997, of procurement transactions for compliance testing and performed other audit procedures that we considered necessary to formulate this opinion. Specifically, the scope of our audit included, but was not limited to, a review of the following:

(1) All sole source, emergency and trade-in sale procurements for the period April 1, 1995 through December 31, 1997

(2) Procurement transactions for the period July 1, 1995 through December 31, 1997 as follows:
   a) One hundred and forty payments each exceeding $1,500
   b) An additional sample of thirty sealed bids
   c) A block sample of five hundred sequentially numbered purchase orders reviewed for order splitting and favored vendors

(3) Four professional service contracts and six construction contracts for permanent improvement projects for compliance with the Manual for Planning and Execution of State Permanent Improvements

(4) Four exempt professional service selections for compliance with internal guidelines

(5) Minority Business Enterprise Plans and reports for the audit period

(6) Information technology plans and approvals for the audit period

(7) Internal procurement procedures manual

(8) Surplus property disposal procedures

(9) Real Property Management Office approvals of leases

(10) File documentation and evidence of competition
SUMMARY OF AUDIT FINDINGS

Our audit of the procurement system of the South Carolina Department of Transportation, hereinafter referred to as the Department, produced the following findings and recommendations.

I. Compliance - General

A. Maintenance Contracts For Safety Rest Areas And Welcome Centers

The Department procured these services as exempt from the Code. The total value of the multi-term contracts of $14,610,852 exceeded the Department’s certification authority.

B. Multi-Term Contract Exceeded Authority

The Department exceeded its certification authority because of options to extend.

C. Unauthorized Procurement

One departmental procurement was made prior to central procurement office approval.

D. Drug-Free Workplace Certifications

The Department has not requested vendors to provide written certifications.

E. Statement of Award

Not all the sealed bid award statements had the statement regarding the bidder’s right to protest. Additionally, we could not find the statement of award for one sealed bid.

F. Exemption Misapplied

A minor construction contract was mis-classified as an exempt procurement.
RESULTS OF EXAMINATION

I. Compliance - General

A. Maintenance Contracts For Safety Rest Areas And Welcome Centers

The Department issued sealed bid SB8112-01-07-98 for the maintenance services for the Safety Rest Areas and Welcome Centers in the state. The solicitation was for one year with the option to extend to an additional five years, thus making the total potential contract period six years. Based on the solicitation, the Department issued the following purchase orders on February 28, 1998 for one year.

<table>
<thead>
<tr>
<th>PO</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>251696</td>
<td>Upstate and middle state locations</td>
<td>$1,799,330</td>
</tr>
<tr>
<td>251697</td>
<td>Lower state</td>
<td>635,812</td>
</tr>
<tr>
<td></td>
<td>Total per year</td>
<td>2,435,142</td>
</tr>
</tbody>
</table>

The total value for six years is $14,610,852.

The Department solicited for the services as an exemption from the Code found in Section 11-35-710 (1) that reads as follows.

The construction, maintenance, and repair of bridges, highways, and roads; vehicle and road equipment maintenance and repair; and any other emergency type parts or equipment utilized by the Department of Transportation.

Prior to the solicitation, the Director of the Office of General Services advised the Department in a letter dated July 10, 1997, that the services did not meet the criteria for the exemption. The letter read in part as follows:

The exemption process is designed to provide a means for procuring goods and services outside of established procurement process when those goods and services cannot be effectively procured utilizing the Code’s procedures. As the agency that must interpret and determine the scope of the exemptions to the Procurement Code, we look very
carefully at the plain language of the exemption and the good or service at question to determine if it is encompassed by the exemption. The language of the exemption does not speak specifically to service contracts for Safety Rest Areas and Welcome Centers. Since the definition of highway contained in Section 57-3-120 is not a common and ordinary definition of that term to the extent that it includes buildings, it does not govern the scope of the exemption.---Otherwise, I know of no reason that these contracts should be exempted for the Procurement Code.

The Department's Executive Director responded on August 25, 1997, stating the Department's disagreement with the interpretation by the Office of General Services. On January 2, 1998, the Department preceded with the procurement under the exemption.

The Department's disagreement resulted in a joint request from the Department and the Executive Director of the Budget and Control Board to the Office of the Attorney General for resolution. The request was submitted on June 17, 1998. The Office of the Attorney General responded on January 8, 1999. The response concluded that the interpretation by the Office of General Services was reasonable and within the intent of the Procurement Code. The response specifically stated the following.

In other words, the interpretation of Section 11-35-710(1) by the General Services Division of the Budget and Control Board, the agency which implements the Procurement Code on a day-to-day basis, is certainly a reasonable construction and appears to be one in keeping with the intent of the Procurement Code. --- Notwithstanding the viable arguments which have been made by the Department of Transportation to the contrary, particularly application of the definition contained in Section 57-3-210, the interpretation rendered by General Services here would be considered reasonable, one which promotes the purpose and intent of the Procurement Code and thus legally controlling. --- Thus, in my opinion, because the General Services Division of the Budget and Control Board is the agency charged with implementing and administering the Procurement Code, a court would follow this agency's interpretation thereof.
We recommend the Department comply with the Code when the current contracts expire. Since the procurement exceeded the Department’s procurement authority, the procurement was unauthorized as defined in Regulation 19-445.2015. The Director of the Department must submit a ratification request of the unauthorized procurement, per Regulation 19-445.2015, to the Director of the Office of General Services. Additionally, the Department must adhere to future interpretations of the Code rendered by the Office of General Services, the agency responsible for the implementation and administration of the Code.

**DEPARTMENT RESPONSE**

The ratification request of the unauthorized procurement was submitted to the Office of General Services. The Department’s response for the audit report is as follows. The contracts for maintenance contracts for the Welcome Centers and Rest Areas historically have been handled through the Construction Office at DOT as an exempt procurement. Until the current audit there was no exception to this method of contracting for this cleaning service. Prior to the audit there was a letter of contract controversy submitted to the Materials Management Officer from the contractor who held the contract at that time. This raised the question of who would have jurisdiction over the contract controversy. At that time there was a difference of opinion and both the Budget and Control Board and Department of Transportation submitted a request to the Attorney General’s Office for an opinion. The opinion stated:

"the interpretation of Section 11-35-710(1) by the General Services Division of the Budget and Control Board, the agency which implements the Procurement Code on a day-to-day basis, is certainly a reasonable construction and appears to be one in keeping with the intent of the Procurement Code. By its terms, Section 11-35-710 empowers the Board (upon the recommendation of General Services Division) to exempt governmental bodies from purchasing certain items through the chief procurement officer’s area of responsibility. The Board is further authorized to exempt specific supplies or services from the Procurement Code and for “just cause by unanimous written decision limit or may withdraw exemptions provided for in this Section.” Here, the Board has not to date granted DOT an exemption for construction and maintenance for rest areas or welcome centers. To the contrary, the Board, through General Services, deems the exemptions contained in Section 11-35-710(1) not to be applicable in this situation. Notwithstanding the viable arguments which have been made by DOT to the contrary, particularly application of the definition contained in Section 57-3-210, the interpretation rendered by General Services here would be considered reasonable, one which promotes the purpose and intent of the Procurement Code and thus legally controlling. While there may well be other broader definitions, which would include rest areas and welcome centers, General Services’
application of the common and ordinary understanding of these terms for purposes of the Procurement Code must be given deference by this Office. Thus, in my opinion, because of the General Services Division of the Budget and Control Board is the agency charged with implementing and administering the Procurement Code, a court would follow this agency’s interpretation thereof.”

The South Carolina Department of Transportation has agreed to abide by the opinion that has been rendered by the Attorney General’s Office in this matter. We have complied with all recommendations of the audit and are awaiting ratification for this exception. We respect the position of the Office of General Services as the agency responsible for the implementation and administration of the Code and will work with you in the future to resolve any differences on interpretations.

B. Multi-Term Contract Exceeded Authority

The Department exceeded its delegated procurement certification authority on a multi-term contract awarded under sealed bid 7874 for computer software and technical support. The Department’s certification limit in the area of information technology is $50,000 per commitment. This certification applies to the total potential purchase commitment by the Department whether single year or multi-term contracts are used. The original award for the bid was $28,220 with an option to extend for two additional years. As a result, the total potential of this contract is $84,660 which exceeds the Department’s certification limit.

Regulation 19-445.2015 defines an unauthorized procurement as an act obligating the State in a contract by any person without the requisite authority to do so by appointment or delegation. Since the total potential of the contract exceeded the authority delegated through certification, the contract is unauthorized and must be ratified as outlined in Regulation 19-445-2015 A (2). We recommend the total dollar potential of multi-term contracts be considered prior to award to ensure the Department is within their delegated certified dollar limits.

**DEPARTMENT RESPONSE**

Sealed bid 7874 for computer software and technical support was bid for one year with an option to renew for two additional years. However, the contract was canceled due to the software platform being changed and we only expended $47,968.20 during a two year period. While the original total dollar potential was $84,660 the actual contract did not exceed $50,000. We will
seek ratification by the Director of the Office of General Services if it still deemed necessary. The Contract Services Section has been cautioned to use the total potential purchase commitment when determining the potential dollar amount of a multi year contract. The contracts will be reviewed prior to award to ensure compliance.

C. Unauthorized Procurement

We noted one instance where the procurement was made prior to approval from the Department’s central procurement office in violation of internal procedures causing the procurement to be unauthorized. Purchase order 239002 for $7,210 was awarded from a tie bid for the removal and installation of an engine, torque converter and miscellaneous parts as required for installation. The Department’s Procurement Internal Policies and Procedures Manual under the section of tie bids, item 5, (Page 36) states, “In all other situations where bids are tied, the award will be made by the purchasing agency to the bidder offering the quickest delivery time, or if the bidders have offered the same delivery time, the tie shall be resolved by the flip of a coin in the office of the chief procurement officer.” Since delivery was not the deciding factor, the Department should have flipped a coin but failed to do so.

Since the procurement was unauthorized, we recommend this transaction be ratified as outlined in Regulation 19-445-2015(A)(1). Tie bids should be resolved in accordance to the internal procedures.

DEPARTMENT RESPONSE

During the audit we discovered this procurement should have been ratified. We had requested the user department send an unauthorized procurement ratification request but failed to follow-up before the purchase order was filed. This procurement was ratified April 4, 1998.

D. Drug-Free Workplace Certifications

On sole source contracts exceeding $50,000, the Department sends the purchase order to the vendor with a copy of the Drug-Free Workplace Act annotated “Note: BY ACCEPTANCE OF THIS PURCHASE ORDER YOU AGREE TO ABIDE BY THE DRUG FREE WORK PLACE
Additionally, we noted on the following exempt contracts that the Department did not obtain a written certification back from the vendor.

<table>
<thead>
<tr>
<th>PO</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>222108</td>
<td>$384,300</td>
<td>Interagency agreement for training classes</td>
</tr>
<tr>
<td>86005</td>
<td>61,000</td>
<td>Tree trimming in right of way</td>
</tr>
<tr>
<td>88560</td>
<td>84,100</td>
<td>Tree trimming in right of way</td>
</tr>
<tr>
<td>221918</td>
<td>69,300</td>
<td>Tree trimming in right of way</td>
</tr>
</tbody>
</table>

Section 44-107-30 of the South Carolina Code of Laws states, “No person, other than an individual may receive a domestic grant or be awarded a domestic contract for the procurement of any goods, construction or services for a stated or estimated value of fifty thousand dollars or more from any state agency unless the person has certified (emphasis added) to the using agency that it will provide a drug-free workplace.” This statute applies to all contracts, including but not limited to, sole source, emergency, and exempt contracts and grants.

We recommend the Department institute procedures to have vendors certify in writing that they will comply with the Drug-Free Workplace Act on contracts greater than $50,000.

**DEPARTMENT RESPONSE**

Upon clarification of the proper certification process for Drug-Free Workplace Act on sole source agreements, we have changed our procedures. A letter that must be signed and returned to us is mailed to the vendor. The Contract Services Section normally includes the Drug-Free Workplace Act as a special provision in bid packages, but failed to do so on the tree trimming contracts and the interagency agreement. All employees have been cautioned to include the special provision clause in their bid solicitations in the future. All bids will be reviewed prior to issuing to ensure compliance.

**E. Statement of Award**

We noted that the resulting statement of award on the following sealed bids did not contain a statement of a bidder’s right to protest.
<table>
<thead>
<tr>
<th>Sealed Bid</th>
<th>Initial Award Amount</th>
<th>Total Potential Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7933</td>
<td>$6,300</td>
<td>$25,200</td>
<td>Gravity tailgate spreaders</td>
</tr>
<tr>
<td>8002</td>
<td>14,500</td>
<td>29,000</td>
<td>Traffic counters</td>
</tr>
<tr>
<td>8064</td>
<td>6,480</td>
<td>32,400</td>
<td>Asphalt lutes</td>
</tr>
<tr>
<td>8089</td>
<td>8,148</td>
<td>32,592</td>
<td>Load binders</td>
</tr>
<tr>
<td>7924</td>
<td>7,200</td>
<td>7,200</td>
<td>Provide technical assistance on toll facility</td>
</tr>
</tbody>
</table>

These solicitations were done by a buyer who was under the misconception that the statement of bidder's rights was not required if the award was less than $25,000. Section 11-35-1520(10) states, “The invitation for bids and the posted notice must contain a statement of a bidder's right to protest under Section 11-35-4210(1).”

We recommend the Department include the statement of a bidder’s right to protest on the statement of award for each sealed bid.

Additionally, we noted that bid 8099 for $12,502 for survey equipment did not have a statement of award in the file. Section 11-35-1520 (10) states, “...notice of an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location specified in the invitation for bids.”

We recommend the Department prepare a notice of award in accordance with this section and maintain a copy in the bid file.

DEPARTMENT RESPONSE
The entire staff has been cautioned that any time a sealed bid is awarded, regardless of the dollar amount, a statement of award must be completed and posted as required. All bid awards will be reviewed to ensure compliance. The department does include a statement of the bidder’s right to protest on the statement of award for bids except those that are bid as exempt. Notice of award
has been prepared and filed as requested. All bid awards will be reviewed to ensure compliance prior to issuing a purchase order.

F. Exemption Misapplied

The Department paid $16,000 on voucher 281133 to a site developer to extend a water line from a subdivision to a Department maintenance shed. The Department believed the procurement was exempt since the water line was in the right of way of a road. The exemption reads “The construction, maintenance and repair of bridges, highways and roads; vehicle and road equipment maintenance and repair; and any other emergency type parts or equipment utilized by the Department of Transportation.” The water line was not related to the road and the maintenance shed is not located within the right of way, therefore this exemption did not apply.

We recommend the Department only apply the exemption to procurements that are directly related to the construction, maintenance and repair of bridges, highways and roads.

DEPARTMENT RESPONSE

The Facilities Planning Office has always handled utility agreements through the SCDOT Utilities Office. However, this practice will be discontinued and will follow the Procurement Code and regulations in the future.
CERTIFICATION RECOMMENDATION

As enumerated in our transmittal letter, corrective action based on the recommendations described in this report, we believe, will in all material respects place the South Carolina Department of Transportation in compliance with the Consolidated Procurement Code.

Under the authority described in Section 11-35-1210 of the Procurement Code, subject to the corrective action, we will recommend the South Carolina Department of Transportation be recertified to make direct agency procurements for three years up to the limits as follows:

<table>
<thead>
<tr>
<th>PROCUREMENT AREAS</th>
<th>RECOMMENDED CERTIFICATION LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods and Services</td>
<td>*$100,000 per commitment</td>
</tr>
<tr>
<td>Information Technology</td>
<td>*$ 50,000 per commitment</td>
</tr>
<tr>
<td>Consultants Services</td>
<td>*$ 50,000 per commitment</td>
</tr>
<tr>
<td>Construction Services</td>
<td>*$ 50,000 per commitment</td>
</tr>
<tr>
<td>Prefabricated Concrete Bridge Spans</td>
<td>*$250,000 per commitment</td>
</tr>
<tr>
<td>Aggregate</td>
<td>*$250,000 per commitment</td>
</tr>
</tbody>
</table>

*Total potential purchase commitment to whether single year or multi-term contracts are used.

James M. Stiles, CPPB
Audit Manager

Larry G. Sorrell, Manager
Audit and Certification
Mr. R. Voight Shealy  
Materials Management Officer  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, South Carolina 29201  

Dear Voight:

We have reviewed the response from the South Carolina Department of Transportation to our audit report for the period of April 1, 1995 - December 31, 1997. Also we have followed the Department’s corrective action during and subsequent to our field work. We are satisfied that the Department has corrected the problem areas and the internal controls over the procurement system are adequate.

Therefore, we recommend the Budget and Control Board grant the South Carolina Department of Transportation the certification limits noted in our report for a period of three years.

Sincerely,

Larry G. Sorrell, Manager  
Audit and Certification

LGS/tl

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