

**CLEMSON UNIVERSITY**  
**PROCUREMENT AUDIT REPORT**  
**JANUARY 1, 2005 - DECEMBER 31, 2007**

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**NOTE:** The University’s responses to issues noted in this report have been inserted immediately following the items they refer to.

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R. VOIGHT SHEALY  
MATERIALS MANAGEMENT OFFICER

October 24, 2008

Mr. R. Voight Shealy  
Materials Management Officer  
Procurement Services Division  
1201 Main Street, Suite 600  
Columbia, South Carolina 29201  
Dear Voight:

We have examined the procurement policies and procedures of Clemson University for the period January 1, 2005 through December 31, 2007. 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, State regulations, and the University's 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 Clemson University 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 those transactions are executed in accordance with management's authorization and 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 Clemson University in compliance with the South Carolina Consolidated Procurement Code and ensuing regulations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert J. Aycock, IV', written in a cursive style.

Robert J. Aycock, IV, Manager  
Audit and Certification

## INTRODUCTION

We conducted an examination of the internal procurement operating policies and procedures of Clemson University. We conducted our review April 3, 2008 through May 2, 2008 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 internal controls of the procurement system 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 ensuing regulations.

On September 27, 2005, the Budget and Control Board granted Clemson University the following procurement certifications.

<u>PROCUREMENT AREAS</u>	<u>REQUESTED CERTIFICATION LIMITS</u>
Goods and Services	\$ 1,000,000 per commitment
Information Technology	\$ 1,000,000 per commitment
Consultant Services	\$ 1,000,000 per commitment
Revenue Generating Management Services	\$ 15,000,000 per commitment
Construction Contract	\$ 2,000,000 per commitment
Construction Contract Change Order	\$ 25% of initial construction contract aggregate amount
Architect/Engineer Contract Amendment	\$ 25% of initial Architect/Engineer contract aggregate amount

Our audit was performed primarily to determine if re-certification is warranted. Additionally, Clemson University requested the following certification increases.

<u>PROCUREMENT AREAS</u>	<u>REQUESTED CERTIFICATION LIMITS</u>
Supplies and Services	\$ 5,000,000 per commitment
Information Technology	\$ 5,000,000 per commitment
Consultant Services	\$ 5,000,000 per commitment
Revenue Generating Management Services	\$ 15,000,000 per commitment
Construction Contract	\$ 5,000,000 per commitment
Construction Contract Change Order	\$ 500,000 per change order
Architect/Engineer Contract Amendment	\$ 200,000 per amendment

## 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 Clemson University, hereinafter referred to as the University, 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 a judgmental sample for the period July 1, 2005 through December 31, 2007 of procurement transactions for compliance testing and performed other audit procedures that we considered necessary to formulate this opinion. 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 January 1, 2005 through December 31, 2007 with findings noted in Section I of the report
- (2) Procurement transactions for the period July 1, 2005 through December 31, 2007 as follows:
  - a) Ninety-seven payments each exceeding \$2,500 with no exceptions
  - b) A block sample of approximately 454 purchase orders to test against the use of favored vendors and splitting of orders with no exceptions
  - c) Additional sample of two best value bids with no exceptions
  - d) Four revenue generating solicitations with no exceptions
  - e) Procurement card transactions for September and October of 2006 with exceptions noted in Section III of the report
- (3) Seven construction contracts and four professional service contracts for compliance with the Manual for Planning and Execution of State Permanent Improvements with exceptions noted in Section II of the report
- (4) Minority Business Enterprise Plans and reports with the following activity reported to The Governor's Office of Small and Minority Business Assistance.

Fiscal Year <u>Ending</u>	MBE Annual <u>Utilization Goals</u>	<u>Actual Utilization</u>
2006	\$3,050,361	\$1,535,272
2007	\$4,013,000	\$1,049,012
2008	\$4,249,603	\$2,058,980

- (5) Approval of the most recent Information Technology Plan with no exceptions
- (6) Internal procurement procedures manual with minor recommendations made
- (7) Surplus property disposal procedures with no exceptions
- (8) Other tests performed as deemed necessary with exceptions noted in Sections IV and V of the report



## SUMMARY OF AUDIT FINDINGS

### I. Sole Source Procurements

#### A. Inappropriate Sole Source Procurements

Some procurements made as sole sources appear inappropriate.

#### B. Blanket Sole Source Determination

The University authorized a blanket sole source determination for energy management services. Based on the written determination, we did not have enough information to conclude that certain transactions were appropriately procured as sole sources.

### II. Indefinite Delivery Contracts

The University failed to require vendors to provide pricing on Delivery Orders in accordance with their Indefinite Delivery Contracts for construction services.

### III. Procurement Card Limits Exceeded

Certain procurement card transactions exceeded the authorized limit of \$2,500 per purchase without specific authority to do so.

### IV. Preferred Printing Vendor Contract Not in Compliance

We noted compliance problems with a RFP solicitation for a preferred printing vendor contract.

### V. The University Not Authorized to Conduct Discussions During RFPs

The University inappropriately engaged in discussions during RFPs.

## RESULTS OF EXAMINATION

### I. Sole Source Procurements

#### A. Inappropriate Sole Source Procurements

The following procurements made as sole sources appear inappropriate.

<u>PO Number</u>	<u>PO Date</u>	<u>Description</u>	<u>Amount</u>
5000019453	02/04/05	Consultant for Marketing Project	\$ 27,365
5000020508	04/05/05	Consultant fee	\$ 30,000
6000023656	10/25/05	Consulting Service	\$125,000
8000028743	07/27/07	Consultant	\$ 95,500
8000029040	08/29/07	Consultant Orig. PO issued for \$27,000. Change order increase issued on 12/20/07 for \$153,000	\$180,000
7000028165	06/11/07	Consultant	\$ 14,001
5000019576	01/13/05	2004 Annual license fee for use of intellectual property	\$ 50,000
6000022717	09/01/05	Completion of CU National Commercial Spot	\$ 22,971
6000023538	10/12/05	Produce TV Advertisements for football and basketball games	\$ 25,000
7000026172	08/24/06	Production of CU National Commercial Spot	\$ 25,000
7000026053	08/08/06	Laboratory Cabinets	\$ 14,653
7000026773	11/01/06	Storage Cabinets for musical instruments	\$ 19,055
7000027404	02/09/07	Storage Cabinets for musical instruments	\$ 7,903
7000027232	01/22/07	Classic Series Tables	\$ 26,450
7000026057	08/08/06	Fitness equipment	\$ 45,087
7000028088	05/15/07	Fitness equipment	\$ 86,458
8000029526	11/02/07	Fitness equipment	\$ 3,766

Section 11-35-1560 of the South Carolina Procurement Code states in part, “A contract may be awarded for a supply, service, or construction item without competition when, under regulations promulgated by the board, the chief procurement officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer, determines in writing that there is only one source for the required supply, service, or construction item. In cases of reasonable doubt, competition must be solicited.”

We recommend competition be solicited for these procurements in the future.

### UNIVERSITY RESPONSE

Clemson agrees with the findings and recommendation. Many of these sole sources are similar in nature (consultants or sole source for compatibility) and we will look closer at these in the future and solicit competition as required.

#### B. Blanket Sole Source Determination

The University authorized a blanket sole source determination for energy management services. Based on the written determination, we were not provided enough information to conclude that the following transactions were appropriately procured as sole sources.

<u>PO Number</u>	<u>PO Date</u>	<u>Description</u>	<u>Amount</u>
5000019670	01/21/05	Labor and Materials for New chill water bridge	\$ 18,695
5000020446	03/29/05	Basement renovations	\$ 1,857
5000021299	05/27/05	New Vav Box	\$ 1,810
6000022066	07/15/05	Toxicology HEPA Filter Decontamination/ Change-out Labor	\$ 11,747
6000023937	12/6/05	Building Environmental Specialist	\$ 72,551
6000024232	02/02/06	JCI Materials Cost Warranty - Electrical Controls Installation	\$ 61,195
7000026822	11/10/06	Santee Cooper VFD/C02 Photovoltaic Project	\$393,726
7000028004	05/01/07	HVAC System Repairs	\$474,724
8000029186	09/21/07	Chilled Water System Improvements Phase II	\$336,002

<u>PO Number</u>	<u>PO Date</u>	<u>Description</u>	<u>Amount</u>
8000029551	11/28/07	Network Integration Engine with 1U Chassis Object Upgrade	\$ 20,413
8000029725	12/03/07	CEP/Raw Water intake addition	\$ 13,615

According to the blanket sole source prepared by the University, a five year agreement was signed in 1998 based on a competitive bid for energy conservation measures in the primary area of computerized energy management controls. At the expiration of that five year contract, the University continued these services with the same vendor through a sole source determination.

Based on the blanket sole source determination, we were not provided enough information to determine that the transactions listed above must have been procured through a sole source contract.

We recommend the University bid these transactions in the future or provide sufficient factual grounds and reasoning on the determination to provide an informed, objective explanation for the decision.

#### UNIVERSITY RESPONSE

Clemson agrees with the findings and recommendation. We have already begun to provide detailed sole source justifications specific to individual procurements with Johnson Controls and will continue to do so in the future when sole source procurements are justified.

#### II. Indefinite Delivery Contracts

The University failed to require vendors to provide pricing on Delivery Orders in accordance with their Indefinite Delivery Contracts (IDCs) for construction services.

<u>Project Number</u>	<u>Description</u>	<u>Amount</u>	<u>Amount Improperly Priced</u>
NCP-4000610	Construct Granite Wall in Woodland Cemetery	\$85,060	\$75,295
NCP 4000472	Outdoor Lab Sewer Repair	\$83,685	\$79,392

Delivery Orders (work) must be priced in accordance with the method the contract was bid. On the IDCs we reviewed, work must be priced using a cost guide multiplied times a percentage of discount. The IDCs recognize that "items" of work may not always be identified in the cost guides. However, in a recent protest hearing brought before the chief procurement officer, Case No. 2008-0015, Atlantic Seaboard Golf Services, Inc. v. SC State University, Irrigation & Landscaping, he stated:

“...the primary scope of a delivery order must be within the scope of the solicitation for indefinite delivery services. Since the scope of the solicitation was based on RS Means, a delivery order must be predominately for work priced in RS Means. Otherwise, the delivery order is outside the scope of the indefinite delivery contract and some other means of procurement must be used.

Since the Delivery Orders cited must be priced using the multiplier and cost guide, and at times, items of work may not be found in the cost guide, pricing items of work outside the cost guide is appropriate to an extent. However, it is not appropriate to price the majority of a Delivery Order outside of the contractor's multiplier and cost guide. What has not been clear is where to draw the line. Most recently, the State Engineer's Office revised its Manual drawing a clear line on this issue. If more than 20% of a Delivery Order can not be priced from the cost guide using the contractor's multiplier, then the IDC does not apply. Solicitations of competition in accordance with the Procurement Code will have to be made. Further, subcontractor pricing is required to be done in accordance with contractor's contract, i.e. using the cost guide and contractor's multiplier. Neither the files nor the Project Estimating Sheets contained evidence that subcontractor pricing was derived using the cost guide and contractors' multipliers.

We recommend IDC Delivery Orders be priced in accordance with the method the contracts were bid.

## UNIVERSITY RESPONSE

Clemson agrees with findings and recommendation. We have already begun to require that 80% of the Delivery Order must be priced from RS Means. All IDC Delivery Orders are priced in accordance with the contract.

### III. Procurement Card Limits Exceeded

Certain procurement card transactions exceeded the authorized limit of \$2,500 per purchase without specific authority to do so.

<u>Transaction Date</u>	<u>Description</u>	<u>Transaction Amount</u>	<u>Purchase Amount</u>
08/24/06	Calculators	\$ 752.45	
08/24/06	Calculators	\$1,483.89	
08/24/06	Calculators	\$1,494.41	
08/24/06	Calculators	<u>\$1,494.41</u>	\$5,225.16
09/26/06	Airline ticket	\$4,256.00	\$4,256.00
09/26/06	Airline tickets	\$5,851.76	\$5,851.76
10/05/06	Airline tickets	\$ 20.00	
10/05/06	Airline tickets	\$1,462.40	
10/05/06	Airline tickets	<u>\$1,462.40</u>	\$2,944.80
09/28/06	Airline tickets	\$ 348.30	
09/28/06	Airline tickets	\$ 348.30	
09/28/06	Airline tickets	\$ 348.30	
09/28/06	Airline tickets	\$ 348.30	
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09/28/06	Airline tickets	\$ 348.30	
09/28/06	Airline tickets	\$ 348.30	
09/28/06	Airline tickets	<u>\$ 348.30</u>	\$4,179.60
10/03/06	Pump modules	\$1,290.00	
10/03/06	Pump modules	<u>\$1,317.00</u>	\$2,607.00

The Clemson University Purchasing Card Program Cardholder Manual prohibits, "Any single purchase over \$2500.00 not listed on the DPV exemption list nor requisitioned through

Procurement Services for mandatory competitive bid solicitations." Because these transactions exceeded the authorized limit, the transactions were unauthorized. The manual outlines steps required when transactions have been determined to be unauthorized. Ratification will have to be requested.

We recommend procurement card purchases be limited to \$2,500 unless specific written authorization exists otherwise.

#### UNIVERSITY RESPONSE

Clemson agrees with the findings and recommendation. We will update our Purchasing Card Manual to reflect that certain purchases over \$2500 are allowed such as airline tickets and purchases off existing state contracts. We will continue to monitor all purchases for "split procurements" and other unauthorized procurements.

#### IV. Preferred Printing Vendor Contract Not in Compliance

We noted compliance problems with a Request for Proposal (RFP) solicitation for a preferred printing vendor contract. The University issued the solicitation on May 22, 2008 and posted the Intent to Award on July 15, 2008. The total potential value of the solicitation is expected to be \$15 million over 5 years. The Chief Procurement Officer for Information Technology delegated authority to the University to procure this contract. We noted the following issues.

We found the written justification for use of a RFP over an Invitation for Bid (IFB) to be inadequate. Section 11-35-1530 states in part, "If a purchasing agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a contract may be entered into by competitive sealed proposals....," The first and fourth paragraphs in the justification do not address the use of a RFP over IFB. The second paragraph of the justification somewhat discusses the use of a RFP over an IFB. The first sentence and the last two sentences in this paragraph provide the most information, but are not sufficient. From the first sentence, the University wants to consider vendor equipment, capabilities, vendor

understanding of the University's needs, delivery plans and experience. The last two sentences in this paragraph state, "Adding these criteria in a specification as requirements might seem like an option, but each criteria have a vast array of responses that could make each offer slightly different and thus one offer more advantageous to the University. As such, a competitive sealed bid would not be possible."

We recommend the University elaborate on the items in paragraph 2, particularly the items in the first sentence. Explain why the University wants to consider vendor equipment, capabilities, vendor understanding of the University's needs, delivery plans and experience in lieu of using a low bid type procurement.

The RFP identifies the term as a five year contract thereby requiring a written multi-term determination. However, a multi-term determination was not prepared. Section 11-35-2030 limits contracts to one year unless, a written determination is prepared before the utilization of a multi-term contract that explains how estimated requirements cover the period of the contract and are reasonably firm and continuing and how such a contract serves the best interest of the State by encouraging effective competition or otherwise promoting economies in state procurement.

Since a multi-term determination was not prepared, the University must limit the contract to one year, the precedent established years ago through a protest hearing.

The RFP did not compete or negotiate price before contract award. Instead, the University required the vendors to bid a "rebate offer" to be paid the University and used that as the financial consideration in evaluating the RFP. Because the amount of the rebate offered by vendors can only be determined after prices were obtained, we disagreed with using rebates as financial consideration. Without prices, the rebate offers were meaningless.

We recommend the University process a new procurement for a Preferred Printing Vendor Contract upon the one year anniversary of the current contract. The current contract cannot be



renewed at the one year anniversary. We also recommend the University use the Request for Qualification process in 11-35-1520 (11) to prequalify bidders and then compete each job among the prequalified bidders.

#### UNIVERSITY RESPONSE

Clemson agrees with the findings and recommendation. We acknowledge the need to improve our written determination as they relate to this contract. The multi-term issue was an administrative oversight that we agree with and will terminate the contract at the end of the first year. Further, we will seek additional guidance from MMO and ITMO on potential ways to contract for these printing services in the future. While we understand the recommendation to go the route of a Request for Qualification, we do not believe that will address our intent to potentially reduce the workload that we will encounter with the outsourcing of our Printing Services operation. Ideally, we desire to have a strategic contract with multiple vendors that will enable both flexibility and preferred pricing while eliminating the need to formally solicit ever print job over \$2500. That was our intent with this contract and we will seek guidance from the Chief Procurement Officers on how this might be accomplished.

#### V. The University Not Authorized to Conduct Discussions During RFPs

The University inappropriately engaged in discussions during RFPs. The University misread Regulation 19-445-2095 (I) 1, a new regulation, and was not aware that approval by the Chief Procurement Officer had to be granted to use the discussion process. The discussion process allows for vendor proposals to be deemed potentially acceptable that would otherwise be deemed non-responsive and authorizes communications with the vendors on how to fix their proposals to make them acceptable. Procedures and training are still being developed to implement this process. The University began using the discussion process in November 2007, but then did away with the process the following May after learning the mistake. The University made no awards to vendors deemed potentially acceptable under the new regulation. The University has since submitted a request for approval to conduct discussions from the Chief Procurement Officers, but the request has not been approved.

#### UNIVERSITY RESPONSE

Clemson agrees with the findings and recommendation. As noted, we have submitted a request to conduct discussions per 19-445-2095 (I) 1, and we will not engage in such discussions unless approved to do so. The fact that we did so was an oversight on our part and quickly corrected.

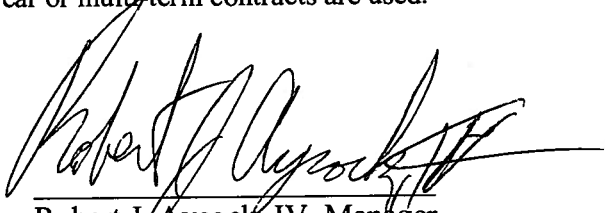
## CERTIFICATION RECOMMENDATIONS

As enumerated in our transmittal letter, corrective action based on the recommendation described in this report, we believe, will in all material respects place Clemson University in compliance with the Consolidated Procurement Code.

Under the authority described in Section 11-35-1210 of the Procurement Code, subject to this corrective action, we will recommend Clemson University be re-certified to make direct agency procurements for three years up to the limits as follows:

<u>PROCUREMENT AREAS</u>	<u>RECOMMENDED CERTIFICATION LIMITS</u>
Supplies and Services	*\$ 1,500,000 per commitment
Information Technology	*\$ 1,000,000 per commitment
Consultant Services	*\$ 1,500,000 per commitment
Revenue Generating Management Services	*\$ 15,000,000 per commitment
Construction Contract	\$ 3,000,000 per commitment
Construction Contract Change Order	\$ 500,000 per change order
Architect/Engineer Contract Amendment	\$ 100,000 per amendment

\*The total potential purchase commitment whether single year or multi-term contracts are used.

  
Robert J. Aycock, IV, Manager  
Audit and Certification

**STATE OF SOUTH CAROLINA**  
**State Budget and Control Board**  
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R. VOIGHT SHEALY  
MATERIALS MANAGEMENT OFFICER

November 17, 2008

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 Clemson University to our audit report for the period of January 1, 2005 to December 31, 2007. Also we have followed the University's corrective action during and subsequent to our fieldwork. We are satisfied that Clemson University has corrected the problem areas and the internal controls over the procurement system are adequate.

Therefore, we recommend the Budget and Control Board grant Clemson University the certification limits noted in our report for a period of three years.

Sincerely,

  
Robert J. Aycock, IV, Manager  
Audit and Certification

RJA/gs

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