

CALIBRATIONS

News from the
Office of the State Engineer

Bid Mistake in Fact vs. Judgement

Part 3

Editor's Note: This article continues the discussion we started in our [April Edition](#).

After Billy's thorough evaluation of Joe's written request to correct his bid, it was determined that the mistake was a mistake in fact and that the mistake was clearly evident from examining the bid document and that the mistake is clearly an error that will cause Joe substantial loss. Billy's evaluation was supported by a written determination of appropriateness made by the chief procurement officer.

For you math junkies out there, Joe's \$250,000.00 error divided by \$120 would result in 2,083 (rounded to nearest whole number) pipe joints.

With Joe's long history of submitting bids let's look at another example of a bid mistake.

The bids for the new 60,000 sq. ft. classroom building for Palmetto University are due at 10:00am. The atmosphere is cool and so is Joe. It's Wednesday morning around 9:47am and Joe arrives at the bid room feeling pretty cocky. As he struts through the room, towards the front, he nods his head and acknowledges several competitors. Now at the front of the room he hands his bid to Billy and says this is the one. Joe sits down and as usual Billy shuts the door and shouts with a loud voice, 10:00am bids are closed. The bids are read aloud and three bidders are grouped at \$19 million. Joe's bid is \$ 18 million. As the room begins to clear Billy asks Joe to hang around for a minute to discuss his bid. Billy asks Joe, are you confident with your bid? Joe a little perplexed says yes but I need to check my bid. I don't know why I am \$1 million lower than the grouping of bidders at \$19 million. Joe heads back to the office and begins to run through the estimate. What went wrong? After a thorough review something jumps out at him in the structural portion of the estimate. The structural back up information from the sub-contractor reads \$1 million for material and \$1 million labor for a total of \$2 million. Joe's Excel

Continued on Page 5

Statewide Contract News

State Term Contracting Team Wants You!



The State Term Contracting Team for Information Technology is looking at establishing **Advisory Groups** for the following future state term contracts:

- ◆ **Cloud Services for IaaS and PaaS**
- ◆ **IT Professional Services**

Please let Kristen Hutto know if your agency would like to participate at khutto@mmo.sc.gov.

Market Research and Agency Input Requests for NEW State Term Contracts (STC):

*The Office of State Procurement (OSP) is seeking input on the following recommendations for new State Term Contracts (STC). If you have any information you can share, please contact the appropriate procurement manager. Our goal is to put contracts in place that will meet **your** needs, but we need your input to ensure success.*

Interagency Mail Services (IMS) (Courier Services) –

The State has completed evaluating the RFI responses. The resulting business analysis completed based on those responses has been forwarded for consideration by the MMO. If you have any questions, reach out to Michael Speakmon (mspeakmon@mmo.sc.gov). We will provide further infor-

Continued on Page 2



Statewide Contract News continued

mation as it develops.

Ruckus Wireless - The OSP will be publishing a solicitation for Ruckus Wireless in the month of June with plans to be awarded in August 2019. Any questions or concerns please contact Randy Barr, Sr., at rbarr@mmo.sc.gov

Proofpoint Software - The OSP will be publishing a solicitation for a new STC for Proofpoint software which is an email protection system providing encryption and threat detection in June or July. Please express your interest in this product and provide any information, questions or concerns to Carol Norfleet at cnorfleet@mmo.sc.gov or 803-737-3224.

SolarWinds Monitoring Software - The OSP market research has determined that we will establish a State Term Contract for SolarWinds Monitoring Software. We anticipate publishing solicitation in the August timeframe with award in October 2019. Any questions or concerns please contact Randy Barr, Sr., at rbarr@mmo.sc.gov.

Carbon Black Consolidated Security - The OSP market research has determined that we will establish a State Term Contract for Carbon Black Security. We anticipate publishing solicitation in the August timeframe with award in October 2019. Any questions or concerns please contact Randy Barr, Sr., at rbarr@mmo.sc.gov.

Varonis Data Security - The OSP is currently conducting market research to determine if there is a need to establish a State Term Contract for Varonis Data Security. Please share all your information or concerns by June 30, 2019 to Will Butler at wbutler@mmo.sc.gov

Market Research and Agency Input Requests for existing State Term Contracts:

Written Document Translation and Telephonic Interpretation Services - Current Contract expires 10/31/2019. Market research is being conducted to ensure that the existing contracts are meeting agency needs and to identify possible improvements. If you

have input or questions please contact the Procurement Manager, Kelly Cobian, at kcobian@mmo.sc.gov or 803-737-5473 with any questions or concerns. Thank you for your help!

State Term Contracts that will NOT be renewed or resolicited:

FileMaker Database Software - The State Term Contract for FileMaker database software will expire on June 30th. This office has determined that there is not enough evidence of end-user interest to re-solicit this as a State Term Contract. **If your agency has a continuing need to purchase FileMaker software, your urgent input is requested immediately, but no later than July 5th** Please contact Will Butler at wbutler@mmo.sc.gov or Randy Barr at rbarr@mmo.sc.gov with any concerns or other input regarding this decision.

Currently Published Solicitations:

All –Terrain Vehicles (5400017820) – Michael Speakmon (mspeakmon@mmo.sc.gov) released the solicitation for state term contracts for All-Terrain Vehicles on May 15, 2019, with an anticipated award date of July 3, 2019. Details can be found on our website. All dates are subject to change.

Police Belts & Holsters (5400018024) – Kelly Cobian (kcobian@mmo.sc.gov) has published a re-solicitation for police belts, holsters and accessories. The State did not receive any responsive offers on Lot 1 (Safariland and Bianchi). The new bid opening was scheduled for June 25 and the estimated award date is July 5, 2019. All dates are subject to change. The remaining awarded contracts are active and that information is available on our website.

Pass Thru Ovens (5400017852). Kelly Cobian (kcobian@mmo.sc.gov) published the solicitation for pass thru ovens on June 17, 2019, with an anticipated award date of August 6, 2019. Details concerning the solicitation can be found at our website. All dates are subject to change.

Office Supplies/Truckload Copy Paper (5400017374) – DeAna Reed-Sharpe (drsharpe@mmo.sc.gov) issued the solicitation on April 24, 2019, with an anticipated

award date of August 9, 2019. If you have any questions or concerns, please reach out to DeAna. All dates are subject to change.

Body Cameras/In Car Video (5400014480) - The RFP for Body Camera/In Car Video, SaaS; Video Storage was published on March 18, 2019. The contract was awarded on May 31, 2019, but subsequently protested on June 10. The protest is under review by the CPO. Any questions or concerns please contact Randy Barr, Sr., at rbarr@mmo.sc.gov

Duo Multi - Factor Authentication - (5400018082) The Duo Solicitation was published on June 19, 2019 with an anticipated award date of August 19. Please contact Randy Barr, Sr., rbarr@mmo.sc.gov or 803-896-5232 if you any questions or concerns.

Symantec Product Services (5400018021) – A Statement of No Award was published on June 27, 2019 regarding this solicitation. We anticipate revising and republishing a new solicitation within the next two weeks. Any questions or concerns please contact Kristen Hutto at khutto@mmo.sc.gov.

Tenable Products & Services (5400017963) - The Intent to Award Statement was published June 24 2019. We anticipate the award to become final on July 5, 2019. If you have any questions or concerns, please contact Kristen Hutto at khutto@mmoc.sc.gov.

Cloud Services (5400016870) – OSP recently published an RFP shared services solicitation, for use by the Division of Technology on behalf of proviso Cabinet agencies. It is in the evaluation phase pending award. If you have any input regarding the **future statewide contract for cloud computing IaaS or PaaS**, please contact Kristen Hutto at khutto@mmo.sc.gov or 803-737-7685. You can review the existing solicitation from the following link: <http://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400016870>

We are also looking at establishing an Advisory Group for a future state term contract for IaaS and PaaS. Please let us know if your agency would like to participate.

Newly Awarded State Term Contracts (STC):

Mobile Device Protection Plan (5400017601) – The

MDPP contract will be awarded on June 24. Pending no protest, it will be final on July 5, 2019, and ready for use. Any questions or concerns please contact Randy Barr, Sr., at rbarr@mmo.sc.gov

Fortinet Products & Services (5400017961) – The five new contracts are effective as of June 25, 2019 and are ready for use. If you have any questions or concerns, please contact Kristen Hutto at khutto@mmoc.sc.gov.

Traffic Signal Heads (5400017675) – Kelly Cobian (kcobian@mmo.sc.gov) posted the awards for these contracts on June 21, 2019. They will be effective July 3, 2019, with a contract start date of August 8, 2019.

School Buses – The new school bus contracts are awarded and were effective June 21. The contact sheet has been updated on our website to reflect the new contracts: <https://procurement.sc.gov/files/contracts/2019%20Bus%20CS%20New%20Format.pdf>

Condoms – Contracts for condoms and contraceptives have been established with three MMCAP vendors. The contract sheet, including ordering instructions for each contract, should be on our website by the time this issue of Dispatches is published: <https://procurement.sc.gov/files/contracts/contraceptives%20june%202019.pdf>

For questions or comments, reach out to Michael Speakmon at mspeakmon@mmo.sc.gov.

Currently Advertised Cooperative Contracts

The following cooperative contracts are currently advertised in SCBO and the State intends to participate in the resulting contracts when awarded, if it is determined to be in the interest of the State. Since we have no control over when the contracts are actually issued, we will have no further information until such time as they are issued.

If you have any questions about these solicitations please contact Michael Speakmon at mspeakmon@mmo.sc.gov.

NASPO – Equipment Rental (RFP PCA-19-01) – Contract for the rental of equipment (tractors, light sets, generators, lifts, fork lifts, etc.) The ad was placed on April 4/24/2019, and the estimated bid opening date is 6/6/2019.

Continued on Page 6



Legislative Updates: Procurement Code Changes Affecting Construction Across State Government Agencies

Notification of New Construction Services Task Order Contract Procedures for Public Comment

2019 Act No. 41 (changes to the SC Procurement Code) has deleted Indefinite Delivery Contracts for Professional Services and Construction Services. In its place, it has established Indefinite Quantity Contracts for Professional Services and Task Order Contracts for Construction Services.

The procedures, limits and forms for Indefinite Quantity Contracts are the same as the Professional Services Indefinite Delivery Contracts – only the name has been changed. These forms are posted on the OSE website under the 2019 Manual and are available for use.

The procedures, limits and forms for Task Order Contracts are quite different from the Construction Services IDCs. These are all now posted in Chapter 9 and Appendix D in draft format in the following location: <https://procurement.sc.gov/manual>. They are currently open for public comment. On Monday, July 1st, Chapter 9 and these forms will be posted in final form in the OSE Manual for use by State Agencies.

Submit all comments to Margaret Jordan at mjordan@mmo.sc.gov or Phil Gerald at pgerald@mmo.sc.gov.

2019 Act No. 41 Construction Changes

Senate Bill 530 (now Act No. 41), which revised the procurement code, was signed by the Governor on May 13, 2019. There are several sections of that bill that affect construction – the major ones are as follows:

Small Purchase limits have increased to \$100K.

NOTE: Refer to Chapter 8 of the OSE Manual for these changes.

Small A/E contract limit has increased to \$50K per contract/\$150K max over 24 months.

NOTE: Refer to Chapter 4 of the OSE Manual for these changes and revised SE-230 and SE-232 forms.

Indefinite Delivery Contracts have been change to:

Indefinite Quantity Contracts (Professional Services) (Project numbers will now start with “P”). Agencies may begin using these contracts immediately.

Task Order Contracts (Construction Services) (Project numbers will now start with “C”). Agencies will have to wait until after an approval period to use this process. Will be available for use on July 1, 2019.

Chapter 9 of the OSE Manual and the 600 series OSE forms have been revised to reflect the changes in #3 above, but are in an approval period. These documents, along with the TOC process, will be available for use on July 1, 2019.

Prequalification for construction contractors is now allowed on any design-bid-build project with prior approval by the State Engineer.

NOTE: This will be available as soon as the process has been developed.

Protest period after posting a notice of award or intent to award has changed from 10 calendar days to 7 business days.

NOTE: Refer to Chapter 1 and revised forms SE-219, SE-370, SE-470, 619 and SE-770.

The 2019 OSE Manual is now posted and has been updated to reflect these changes (except pre-qualification) and is available on the OSE website.

Please make sure that all forms you use come directly from the 2019 OSE Manual on our website, as numerous ones are being changed to reflect minor changes in the law.

Please contact Margaret Jordan (803-737-0773) or Phil Gerald (803-737-3222) if you have any questions.



Bid Mistake *continued from Page 1*

spread sheet has a space for material, labor and total. The structural material has \$1 million and the labor space was left blank and the total has \$1 million. Joe's shoulders drop and he calls Billy to notify him of the mistake and ask to withdraw his bid explaining the nature of the mistake. What are the factors that Billy should consider in reviewing this request? Let's review:

Joe's mistake is not clearly evident from examining the bid document.

In order to obtain relief for bid mistake, the mistake must be a mistake of fact. Bruner & O'Connor on Construction Law §2:135.

The burden of proof on the bidder seeking relief is clear and convincing evidence of the mistake. Ibid, §2:134; See also, *Martin Engineering, Inc. v. Lexington County Sch. Dist. One*, 365 S.C. 1, 615 S.E.2d 110, (2005).

A **mistake of fact results from such things** as unintentional arithmetic errors, typographical errors, transposition errors, decimal misplacement, or **an unintentional omission of a quantity of work**, labor or material **made directly in the compilation of a bid**. Bruner & O'Connor, §2:135.

S.C. Code Ann. 11-35-1520(7) states in part:

After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of the code and the regulations promulgated pursuant to it. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, ..., must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency.

Regulation 19-445.2085

A bidder or offeror must submit in writing a request to either correct or withdraw a bid to the procurement officer. Each written request must document the fact that the bidder's or offer's **mistake is clearly an error that will cause him substantial loss**. All decisions to permit the correction or withdrawal of bids shall be supported by a written **determination of appropriateness made by the chief procurement officers** or head of a purchasing agency, or the designee or either.

Should Billy approve this request?

We will continue this series next month with the answer and a new twist on this particular bid mistake.





Statewide Contract News continued

MMCAP – Specialty Pharmaceuticals (Reference #27888) – This will be a new contract should the State determine participation is in its interest. Ad was placed on April 30, 2019, and this bid has already opened.

MMCAP – Dental Products and Services (Reference #28028) – The State is already participating in this contract. This is just the updated version. Ad was placed on May 21, 2019, and estimated bid opening date is July 1, 2019.

MMCAP – Pharmaceutical Waste Disposal (Reference #27933) – This will be a new contract should the State determine participation is in its interest. Ad was placed on May 6, 2019 with an estimated bid opening in June.

MMCAP – USP Chapter 800 Implementation and Compliance Resources (Reference #28026) – This will be a new contract should the State determine participation is in its interest. Ad was placed on May 24, 2019 with an estimated bid opening in June.

MMCAP – Distribution of Vaccines Including Influenza Vaccine (Reference #28099) – The State is already participating in this contract. This is just the updated version. Ad was placed on 06/06/2019, and estimated bid opening date is 7/23/2019.



Two of DPS' staff received news marking milestones in their government and procurement careers.

Stacy Gregg: The South Carolina Association of Governmental Purchasing Officials (SCAGPO) announced Stacy Gregg received the 2019 National Institute of Governmental Purchasing (NIGP) Distinguished Service Award.

Recipients:

- ◆ Demonstrate an original and innovative resolution of a critical procurement issue.
- ◆ Contribute to a one-time, outstanding effort, which benefited either NIGP or their organization.
- ◆ Help to bring credit to NIGP and/or their organization with exceptional contributions to the procurement field or their community.

Faith Williams: The Universal Public Procurement Certification Council (UPPCC) Board of Directors conferred the designation of Certified Professional Public Buyer (CPPB) on Faith Williams. This achievement required Faith to meet specific eligibility requirements through formal education, public procurement experience, and coursework/training in procurement. By passing the examination, she demonstrated the required knowledge level and competency for the CPPB designation. Please join *DisPatches* and the DPS family in congratulating Stacy and Faith in their respective achievements!



What is that "A" in a box all about?

A³ or "A cubed" is our brand! It summarizes our mission statement and serves as an ever present reminder of the commitment the Division of Procurement Services has made to itself, our State Government colleagues, and the public. In short, A³ stands for:

Acquire — We provide efficient, innovative, and responsive services to acquire information technology, construction, and goods and services through effective broad-based competition.

Administer — We provide guidance and oversight to promote integrity, ethical behavior, and increased public confidence in the acquisition process.

Advise — We provide training and advice to ensure compliance with law, policies, and practices.

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