

## YES, WE'RE OPEN FOR BUSINESS

### COVID-19 and the Procurement Community

During these times without precedent in recent history, the Division of Procurement Services is actively supporting the State's response to the spread of COVID-19. We are supporting Emergency Support Function (ESF) – 7, Logistics, actively working over 300 resource requests from around the State. We are also supporting ESF – 3, Public Works and Facilities, as asked. We are also performing responsibility checks of vendors that are reaching out to us, other agencies, local government, and hospitals offering their services. Most of our staff are working remotely but we do keep a skeletal presence in the office. If you need to contact us email is best.



For your convenience, we have posted guidance and resources on our website. You can click on this link and you will see the resources listed in the box on the left-hand side of the page: <https://procurement.sc.gov/>.

If you receive an unsolicited contact from a vendor that you have no experience with offering needed supplies, you can send that vendor or the vendor's information to [dps@sfaa.sc.gov](mailto:dps@sfaa.sc.gov). We have set up a process to perform responsibility checks on these vendors. At the end of each day we are posting a spreadsheet titled Vendor Information on our website showing the results of our investigations. If you want to consider doing business with one of these vendors, you can review what we have learned and decide if you have sufficient information on that vendor to proceed, you need to do further research on your own, or you do not want to do business that vendor. **This guidance should in no way be taken as an endorsement or non-endorsement of any vendor.**

We have also received questions about contractual issues such as contract amendments, force majeure, refunds, performance, etc., in the wake of COVID-19. If the contract is a State Term Contract, please engage us to aid in resolving the issue. Otherwise, if the issue concerns an agency contract, consult first with your agency's legal department about those issues to bring about a resolution. Of course, we are available to provide guidance and grant approvals as required.



*Force*

*majeure*

*a primer*

Due to the disruptions caused by the COVID-19 pandemic, some agencies are receiving notices from contractors claiming that their non-performance is excused by the pandemic. Some may even invoke a *force majeure* clause specifically. Likewise, agencies may wonder whether their failures to perform may be excused by a *force majeure* clause.

"*Force majeure*" is defined as a "superior or irresistible force" or "an event or effect that cannot be reasonably anticipated or controlled." *Force majeure* clauses are meant to give protection against so-called "acts of God"—such as fires, wars, floods, or epidemics. Such events can make it impossible for a party to perform its obligations under the contract and, in some cases, *may* excuse performance.

While *force majeure* issues are unique to each contract and there is no one-size-fits-all recommendation, the following guidelines may be helpful.

Many agency and statewide term contracts have something akin to a *force majeure* clause. The relevant

compendium clause is found in subparagraphs (c) and (d) of the DEFAULT (JAN 2006) clause, No. 7B075-1. As reflected in paragraph (c), this clause does not excuse nonperformance unless, in each instance, the failure to perform is beyond the control and without the fault or negligence of the Contractor. Considerable case law has applied this concept. Please note, this clause only protects contractors. This is because payment is typically an agency's primary (and often only) critical performance obligation. That said, some agency obligations may be affected by these difficult circumstances, such as when the State is obligated to be ready for a go-live date or have a construction site cleared.



***Force majeure?***

Not all contracts have a *force majeure* clause, and not all such clauses are the same, so you and your agency's legal counsel should review the contract and any applicable clauses carefully.

Whether a *force majeure* clause applies depends on the circumstances. They are not automatically applied. If a contractor seeks to invoke a *force majeure* clause, ask the contractor to justify its request in detail and explain why it cannot perform. Make sure the contractor knows that you are simply gathering information and not waiving the agency's right to demand performance. With this information, your agency's legal counsel will be better able to evaluate the strength of the contractor's claim. A contractor that fails to perform without adequate justification may be liable for breach of contract.

As part of its contract review, the agency should identify any of its performance obligations that may be impacted by the COVID-19 pandemic (or the contractor's inability to perform). If it is impossible or impracticable for the State to meet a performance obligation, and the contract lacks a *force majeure* clause that applies to the State, common law doctrines such as "impossibility of performance" or "impracticability of performance" may be available to excuse performance. These doctrines, however, are typically weaker than a *force majeure* clause. An agency may also explore a mutual arrangement, a change order, or seek (if necessary) options available under the CHANGES (JAN 2006) clause, No. 7B025-1. Depending on the contract and the circumstances, other options may be available. Please consult your agency's legal counsel.

For a general understanding of force majeure clauses, you may want to read the following articles; however, reading these articles is not a substitute for consulting with legal counsel when you receive a force majeure claim. We've collected these links [HERE](#).



## ***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.*



## Statewide Contract News

### COVID-19 Specific Issues

**Mandatory Use of State Term Contracts (STCs)** – During emergencies, the State's STCs should always be your **first** resource when sourcing requirements. See the memorandum issued by Division Director Delbert Singleton at this link: [https://procurement.sc.gov/files/webfiles/COVID-19%20Guidance%20and%20State%20Term%20Contract%20Information%20\(002\).pdf](https://procurement.sc.gov/files/webfiles/COVID-19%20Guidance%20and%20State%20Term%20Contract%20Information%20(002).pdf)

**Proper Use of the Temporary Personnel Services Contract** – As a reminder, positions available under the STC for temporary personnel services are limited to the specific positions listed on the contract, and then only to supplement your existing personnel on a TEMPORARY basis. Be careful not to assume you are within the terms of the contract if you start looking at creative solutions. For example, you can supplement your agency-hired (not contracted) janitorial personnel during this time if you need cleaning more often than it's already being performed. However, you cannot hire a new "company" to provide highly specialized sanitation services under this contract because that is a new and different service.

The positions on this contract are intentionally generic. If you have a highly specialized personnel requirement, you must source that separately in accordance with the Code or your agency's human resources policies. Let us know if you need guidance on a specific situation about which you're having doubts.

**Medical Supplies** – Everyone is critically short on certain types of medical supplies. Distributors are allocating those supplies based on different factors. Read the memorandum issued by Division Director Delbert Singleton at this link: <https://procurement.sc.gov/files/webfiles/COVID-19%20Guidance%20and%20Contract%20Information.docx>.

**Office Supplies Delivery** – Just as we're looking to limit our exposure our contractors are seeking ways to minimize theirs. To that end, the State has agreed to a short duration change to desktop delivery requirements. Details can be found on the Office Supplies contract sheet at this link: <https://procurement.sc.gov/files/contracts/Office%20Supplies%20Contract%20Sheet%20%2003%2018%202020.pdf>

### IT Updates

See the "**Currently Advertised Cooperative Contracts**" for an important notice about the State's **Copy and Print Output Device Program**.

**DO YOU HAVE AN INSTALLED BASE OF ORACLE SOFTWARE PRODUCTS?** At this time, we're still in negotiations and do **not** have a statewide term contract in place for Oracle Software & Maintenance. If your agency has an upcoming Oracle Software Update License & Support or true-up purchase in 2020, please send the details of the transaction (including product names, license types, and quantities of each) to Kristen Hutto at [khutto@mmo.sc.gov](mailto:khutto@mmo.sc.gov) by April 6, 2020.

The Master Information Technology Agreement (MITA) remains under development. We have extended the deadline for responses to this Request for Comment to 11:00 AM on **April 20, 2020** at this time.

When we publish the MITA, we may further extend the response deadline. In any event, we will ensure there is ample time for the industry's review. Thank you for your patience and for participating in this process. If you have any questions or concerns, please contact Kristen Hutto at [khutto@mmo.sc.gov](mailto:khutto@mmo.sc.gov) or (803) 737 – 7685.

The Master Information Technology Manufacturer Agreement Program (MITMAP) Recruitment Solicitation Request for Comment document (titled "*Manufacturer RFC*") has been published here - <http://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400018752>

The Statewide Information Technology Reseller (STIR) Master Contract Solicitation Request for Comment document (titled "*Reseller RFC*") has been published here -

<http://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400018751>

**PLEASE REVIEW AND SUBMIT REQUEST FOR COMMENT FEEDBACK TO [KHUTTO@MMO.SC.GOV](mailto:KHUTTO@MMO.SC.GOV) BY MARCH 25, 2020!**

## **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.*

**Type A-2 Buses** – In conjunction with the SC Department of Education, we're exploring the opportunity to contract for Type A-2 buses. Operation of these buses would require a commercial driver's license (CDL), but they are smaller than a Type C or D and could potentially provide some flexibility in a bus fleet. Please contact Ellicia Thompson ([ethompson@mmo.sc.gov](mailto:ethompson@mmo.sc.gov)) if you are interested in this type of bus or have any questions related to it.

**Tasers** – We're looking for input on the possibility of creating a state term contract for Tasers. Any and all information is appreciated, but we are specifically looking for: what is being used now, where those items are being purchased, what associated supplies/accessories are important (or required) for use during/after the purchase, are purchases made by buying several at a time (maintaining a stock) or mostly as needed, and, other than the obvious law enforcement related agencies, are there any other users who would purchase off of a resulting contract should one be awarded? Please contact Michael Speakmon ([mspeakmon@mmo.sc.gov](mailto:mspeakmon@mmo.sc.gov)) with any information you may have.

**Educational Supplies** – We've gotten requests for a contract for educational supplies, but we need a lot more info before we can begin to truly research this further. Our primary concern is how to properly define what an "educational supply" is. Many of the items used in a classroom (paper, pens/pencils, crayons, etc.) are already available under existing office supply contracts (<https://procurement.sc.gov/files/contracts/Office%20Supplies%20Contract%20Sheet%20%2003%2018%202020.pdf>). Education items related specifically to science education are available under the existing Science Education Supply contracts (<https://procurement.sc.gov/files/contracts/Science%20Ed%20Contract%20Sheet%2010.08.2019%20%28003%29.pdf>).

What we're looking for is a way to define a group of products which don't interfere with items already available on current state term contracts and would be considered educational supplies that could be contracted separately. Contact Kelly Cobian ([kcobian@mmo.sc.gov](mailto:kcobian@mmo.sc.gov)) with any information you're able to provide.

**Light bulb recycling** – It's come to our attention there may be a large number of facilities looking for a way to dispose of/recycle lamps & lightbulbs. There are programs available where the agency may purchase a box and fill it with old lamps and bulbs. The contractor picks up the box, disposes of/recycles the materials, and submits a report sufficient for compliance to the user. All costs associated with service are included in the cost the box. If you or your facility manager are interested in this type of service, contact DeAna Reed-Sharpe ([desharpe@mmo.sc.gov](mailto:desharpe@mmo.sc.gov)).

**Fire Sprinkler Annual Testing & Inspection** – Through another contract, we've become aware of the need for annual facility fire systems testing and inspection. Our initial research indicates this may be something we can put in place relatively easily providing a valuable service to our customers at the same time. Any input is appreciated by contacting Ellicia Thompson ([ethompson@mmo.sc.gov](mailto:ethompson@mmo.sc.gov)) as soon as possible. Also, if you think there are other regular facility inspection requirements that may make a good state term contract, provide that information as well.

## **Market Research and Agency Input Requests for existing State Term Contracts**

**Microsoft Software Contract (4400017751)** -- In order to ensure we best serve you, please help us by completing a quick survey on the Statewide Microsoft Software Contract [here](#).

**Self-Funded Web Portal** – The current contract 4400008796 resulting from solicitation 5400007500 expires July 15, 2021. OSP will be publishing an RFP for subject solicitation in the July/August timeframe. If you have any input or suggestions for this RFP please contact Randy Barr, Sr. no later than May 15<sup>th</sup>, at [rbarr@mmo.sc.gov](mailto:rbarr@mmo.sc.gov) or 803-896-5232.

**Dell QuestOne Privilege User and Identity Software and Hardware (5400007574)** -- The current contract 440008297 has been extended for six months and the new expiration date is November 29, 2020. The OSP plans to publish an RFP in the month of April. If you have any input or suggestions for this RFP, please contact Randy Barr, Sr. no later than April 10<sup>th</sup> at [rbarr@mmo.sc.gov](mailto:rbarr@mmo.sc.gov) or 803-896-5232.

**SAP SuccessFactors LMS Statewide (540009365)** -- The current contract 4400010768 has been extended for six months and the new expiration date is December 28, 2020. OSP plans to publish an RFP by early May. If you have any input, questions or concerns please contact Kristen Hutto at [khutto@mmo.sc.gov](mailto:khutto@mmo.sc.gov) or (803) 737 – 7685.



**Household Appliances** – Kelly Cobian ([kcobian@mmo.sc.gov](mailto:kcobian@mmo.sc.gov)) is researching a new household appliance contract. We have already had some internal discussions about changes to this contract (some additional appliances), however we would really like to have any recommendations you may have. If you're a current user of this contract or if you might be if there were additional offerings, please contact Kelly as soon as possible with your comments or questions.

**Large Tractors and Mowers** – DeAna Reed-Sharpe([drsharpe@mmo.sc.gov](mailto:drsharpe@mmo.sc.gov)) is currently working with SCDOT to finalize specifications for the equipment included in this solicitation. The anticipated solicitation publication date is April 2020. If you have any questions, comments or input to provide, please contact her as soon as possible.

**Vehicle Rental Services** – The current contracts expire on November 30, 2020. Michael Speakmon ([mspeakmon@mmo.sc.gov](mailto:mspeakmon@mmo.sc.gov)) is beginning the business analysis phase of this project and is looking for suggestions for ways to improve the contract. We're considering a nationwide component of this contract for travel outside South Carolina. Is this something you would like to see added? Are there other issues that you need addressed? If so, please contact Michael as soon as possible.

**Trash Can Liners (High/Low Density)** – Kelly Cobian ([kcobian@mmo.sc.gov](mailto:kcobian@mmo.sc.gov)) is researching the next iteration of these contracts which expire in March of 2021. Please contact her with your ideas.

**Solar Flashers** – Ellicia Thompson ([ethompson@mmo.sc.gov](mailto:ethompson@mmo.sc.gov)) is finalizing research into this contract and needs your comments on use and performance. We can see who is buying what, but that doesn't give us the "total customer experience" we're looking for. Please contact her as soon as possible with any information you have.

**Backhoes/Loaders & Motor Graders** – The current contracts expire in February of 2021 and now is the time to provide input for the next version. Do we need to update the specifications? Is there new equipment that should be on the new contract? Has newer technology made some of the equipment outdated? Only you can answer these questions so we need your help. Contact Ellicia Thompson ([ethompson@mmo.sc.gov](mailto:ethompson@mmo.sc.gov)) as soon as possible.

**Light Bars – Law Enforcement** – DeAna Reed Sharpe ([drsharpe@mmo.sc.gov](mailto:drsharpe@mmo.sc.gov)) is beginning her research into the next iteration of these contracts. Please contact her ASAP with suggestions/recommendations/improvements. Are there products that need to be added? Removed? Replaced? Enlighten her!

## **State Term Contracts that will NOT be renewed or resolicited**

**Traffic Signaling Software and Equipment (5400004439)** -- The current contract 4400007945 will expire August 12, 2020 and the OSP won't rebid for a new contract based on input and information from Department of Transportation. DOT and local governments can still make any license payments or maintenance for the existing software utilizing other methods within the source selection codes. If and when DOT decides to upgrade or replace the software, they'll submit a competitive procurement to be completed by OSP for a new contract. If you have any input or suggestion for this RFP please contact Randy Barr, Sr. at [rbarr@mmo.sc.gov](mailto:rbarr@mmo.sc.gov) or (803) 896- 5232.

**Certes Network Hardware & Software (44000010745)** -- Due to low usage of the Certes Network Hardware & Services statewide contract (44000010745) throughout its term, we intend to allow the contract to expire on June 15, 2020. We don't anticipate soliciting a replacement. If you have any questions or concerns, please contact Kristen Hutto immediately at [khutto@mmo.sc.gov](mailto:khutto@mmo.sc.gov) or (803) 737 7685.

## **Currently Published Solicitations**

**Biometric RFP (5400019140)** -- The current solicitation was published on January 16<sup>th</sup> and opened March 4<sup>th</sup>. We anticipate awarding it after the panel review in June/July 2020. If you have any questions or concerns please contact Randy Barr, Sr. at [rbarr@mmo.sc.gov](mailto:rbarr@mmo.sc.gov) or (803) 896 – 5232.

**Records Conversion – Paper to Digital (540008164)** -- This contract has been extended to October 12, 2020. OSP published a new solicitation (5400019274) and it will open April 15, 2020. We anticipate awarding in May/June. If you have any questions or concerns, please contact Will Butler at [wbutler@mmo.sc.gov](mailto:wbutler@mmo.sc.gov) or 803-737-9854.

**Juniper Networks (5400019515)** -- The current solicitation was published on March 13, 2020 and will open on April 23, 2020. We anticipate awarding May 2020. If you have any questions or concerns please contact Randy Barr, Sr. at [rbarr@mmo.sc.gov](mailto:rbarr@mmo.sc.gov) or (803) 896 – 5232.

**Telematics (After Market Fleet Monitoring) (5400018151)** – The RFP to establish a STC for Telematics is currently in the

evaluation phase with an anticipated award in May. If you have any questions or concerns, please contact Will Butler at [wbutler@mmo.sc.gov](mailto:wbutler@mmo.sc.gov) or (803) 737-9854.

**Oracle (5400018160)** – The RFP for Oracle is opened and is in the negotiation stage. We hope to have a contract in place by May 2020.

**DO YOU HAVE AN INSTALLED BASE OF ORACLE SOFTWARE PRODUCTS?** At this time, we do **not** have a statewide term contract in place for Oracle Software & Maintenance. If your agency has an upcoming Oracle Software Update License & Support or true-up purchase in 2020, please send the details of the transaction (including product names, license types, and quantities of each) to Kristen Hutto at [khutto@mmo.sc.gov](mailto:khutto@mmo.sc.gov) by April 6, 2020.

## **Newly Awarded State Term Contracts (STCs)**

**Mail Services Presort & Barcode (5400019419)** – Ellicia Thompson ([ethomspon@mmo.sc.gov](mailto:ethomspon@mmo.sc.gov)) is evaluating offers received and we'll publish the intent to award on March 25, 2020 as scheduled. We don't anticipate a break in services between the old and new contracts.

## **Currently Advertised Cooperative Contracts**

**Copier/Output Device NASPO Contracts** -- (Nevada as Lead State to Agreement #3091) These contracts have been extended up to June 30, 2020. Participating Addendum for new NASPO Contracts awarded by Colorado as Lead State on NP-18-01 are to be negotiated and awarded prior to that expiration date. Questions may be directed to Carol Norfleet ([cnorfleet@mmo.sc.gov](mailto:cnorfleet@mmo.sc.gov)) or 803-737-3224.

**Copy and Print Output Device Program** – Review is in progress on a Statewide Requests for Proposal for a comprehensive copy and print output device program contract that will bring acquisition of copy, print, scan, and duplication devices and equipment, as well as managed print and cost per copy agreements, under one STC. The goal is to streamline the processes and improve customer convenience and cost. **A customer survey will be sent out soon, and we encourage everyone to participate as we continue to gather information about how this RFP will be structured and awarded.** Questions may be directed to Carol Norfleet ([cnorfleet@mmo.sc.gov](mailto:cnorfleet@mmo.sc.gov)) or 803-737-3224.

**Data Communications Products & Services NASPO Contracts** (Utah as Lead State to Agreement #JP14001) – Contracts under this Agreement will expire May 31, 2020 and a new RFP was issued by Utah under Agreement SK18001. **The State intends to position new contracts according to the needs of end users. Please provide information and feedback on products you continue to utilize, or plan to utilize in the future, from the vendors awarded contracts.** These contracts can be reviewed at <https://www.naspo.valuepoint.org/portfolio/data-communications-2019-2026/>. Questions may be directed to Carol Norfleet ([cnorfleet@mmo.sc.gov](mailto:cnorfleet@mmo.sc.gov)) or 803-737-3224.

**Computer Equipment (PCs, Servers, Storage, Peripherals) (NASPO)** – Contracts have been extended via amendment to South Carolina's Participating Addenda with the following manufacturer partners: **Apple, Dell, Howard, HP Enterprises, HP Inc., Lenovo Global Technologies, Lenovo, Microsoft, and Pure Storage.** The maximum potential duration of these contracts has been extended beyond the former expiration date of March 31, 2020 to a potential expiration date of July 31, 2021 or until new contracts are in place for this category of IT. If you have any questions about these contracts, please contact Will Butler at [wbutler@mmo.sc.gov](mailto:wbutler@mmo.sc.gov) or (803) 737-9854.

