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1. [S.C. Code Regs. 19-445.2127](#)

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[S.C. Code Regs. 19-445.2127](#)

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South Carolina Code of Laws, Regulations > Chapter 19 State Budget and Control Board > Article 1 Office of Executive Director > 19-445. Consolidated Procurement Code

19-445.2127. Organizational Conflicts of Interest.

A. General.

(1) “Organizational conflict of interest” occurs when, because of other activities or relationships with the State or with other businesses:

- (a) a business is unable or potentially unable to render impartial assistance or advice to the State, or
- (b) the business’ objectivity in performing the contract work is or might be otherwise impaired, or
- (c) a business has an unfair competitive advantage.

(2) This regulation applies to acquisitions of supplies, services and information technology, except for acquisitions made pursuant to Section 11-35-1550. Unless the procurement uses a project delivery method identified in Section 11-35-3005(1)(e), 1(f), or (2)(a), this regulation does not apply to acquisitions under Article 9 (Construction, Architect-Engineer, Construction Management, and Land Surveying Services).

(3) The general rules in sections B (Providing systems engineering and technical direction), C (Preparing specifications or work statements), and D (Providing evaluation of offers) below prescribe limitations on contracting as the means of avoiding organizational conflicts of interest that might otherwise exist in the stated situations. Conflicts may arise in situations not expressly covered in sections B, C, and D. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are

- (a) Preventing the existence of conflicting roles that might bias a contractor’s judgment; and
- (b) Preventing unfair competitive advantage. Without limitation, an unfair competitive advantage exists where a business competing for award of a State contract possesses (i) proprietary information that was obtained from the State without authorization; or (ii) source selection information (R.19-445.2010C) that is relevant to the contract but is not available to all competitors, and such information would assist that business in obtaining the contract.

(4) The terms “contractor” and “subcontractor” are defined by Section 11-35-310.

B. Providing systems engineering and technical direction.

(1) A business shall not be awarded a contract to supply a system or any of its major components, or be a subcontractor or consultant, if that business, as a contractor, provided or provides a combination of substantially all of the following activities:

- (a) determining specifications or developing work statements,
- (b) determining parameters,
- (c) identifying and resolving interface problems,

- (d) developing test requirements,
- (e) evaluating test data,
- (f) supervising design,
- (g) directing other contractors' operations, and
- (h) resolving technical controversies.

(2) This section B does not prohibit a contractor providing systems engineering and technical direction, from developing or producing a system if the entire effort is conducted under a single contract.

C. Preparing specifications or work statements.

(1) If a contractor prepares and furnishes specifications for a specific acquisition of tangible supplies or information resources, or their components, that contractor shall not be allowed to furnish these items, either as a contractor or as a subcontractor at any tier, for a reasonable period of time including, at least, the duration of the initial contract for purchase of the items.

(2) If a contractor prepares, or assists in preparing, a work statement to be used in a specific acquisition of a system or services—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply the system, major components of the system, or the services, either as a contractor or as a subcontractor at any tier, unless (a) the acquisition is a sole source under R.19-445.2105; (b) it has participated in the development and design work; or (c) more than one contractor has been involved in preparing the work statement.

D. Providing evaluation of offers. If a contractor evaluates or supports the evaluation of a bid or proposal for a contract with a governmental body, that contractor and its affiliates are barred from performing under that contract as either a contractor or as a subcontractor at any tier.

E. Procurement Officer Responsibilities.

(1) The responsible procurement officer shall (a) analyze planned acquisitions in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and (b) review plans to avoid, neutralize, or mitigate significant potential conflicts before contract award.

(2) The responsible procurement officer shall determine whether the apparent successful offeror has an organizational conflict of interest. The responsible procurement officer shall award the contract to the apparent successful offeror unless (i) a conflict of interest is determined to exist that cannot be avoided or mitigated, or (ii) the conflict is not waived as provided in section F. Before determining to withhold award based on conflict of interest considerations, the procurement officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond.

F. Waiver. With respect to the award of an individual contract, the using agency may waive an organizational conflict of interest by determining that the application of these rules in a particular situation would not be in the State's interest. A determination to waive a conflict of interest must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or her designee above the level of the agency's senior procurement official. If a waiver involves an acquisition with a value that exceeds either the limits of the governmental body's authority under Section 11-35-1210(1) or one million dollars, the appropriate Chief Procurement Officer must concur in the waiver and the written determination must be published with the notice of intent to award. Any report required by R.19-445.2020A(2) must include every waiver addressing a procurement during the audit period.

G. The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies to identify organizational conflicts of interest and techniques to avoid or mitigate them.

Statutory Authority

S.C. Code Regs. 19-445.2127

(Statutory Authority: Act 178 of 1981, and 1976 Code §§ 4-29-140, 44-7-1590, and 48-3-140)

History

Added by State Register Volume 43, Issue No. 8, Doc. No. 4895, eff August 23, 2019.

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